

CRS Report for Congress

Minimum Wage in the 110th Congress

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Summary

On May 25, 2007, the President signed into law a supplemental appropriations bill (H.R. 2206, P.L. 110-28) which included an increase in the federal minimum wage with special provisions for American Samoa and for the Commonwealth of the Northern Mariana Islands (CNMI). Under the act, the federal minimum wage will increase to \$5.85 an hour on the 60th day after enactment and, in steps, to \$7.25 per hour by the summer of 2009. Smaller increases will apply to the CNMI and to American Samoa until \$7.25 is reached.

In 1938, following decades of discussion and research in academic and policy circles, Congress adopted the Fair Labor Standards Act (FLSA). It quickly became the primary federal statute in the fields of minimum wage, overtime pay, child labor, industrial work at home, sweatshop control, and related areas.

Although the FLSA mandates that not less than the minimum wage be paid to most workers, there are exceptions. For example, under *the tip credit provisions* of the act, the employer is required to pay \$2.13 per hour — so long as the remaining portion of the minimum wage is accounted for in tips regularly received. Similarly, a youth (under 20 years of age) can be paid \$4.25 per hour through the first ninety consecutive days of employment with an employer. Persons with disabilities can be paid a wage commensurate with their productivity — but with no minimum standard. And, some employees of small businesses may be entirely exempt from the federal minimum wage. Conversely, some states have minimum wage laws that are in excess of the federal minimum wage — some, significantly so. Where there is overlapping jurisdiction, the wage more nearly in the workers' interests prevails.

Early in the first session of the 110th Congress, the House of Representatives adopted a bill (H.R. 2) to increase the federal minimum wage in steps to \$7.25 per hour and, incrementally, to extend its coverage to the Commonwealth of the Northern Mariana Islands. The Senate Finance Committee began hearings on a series of tax and related incentives to add to the House-passed bill (and that was done), but that initiative raised complications. Traditionally, revenue bills are first taken up by the House and, therefore, H.R. 2 remained in limbo.

Subsequently, three other bills with implications for the minimum wage were taken up by the House. The House first passed H.R. 976, which provided a vehicle of revenue options (possibly to be joined to H.R. 2), but it was not acted upon in the Senate. This was followed by H.R. 1591, an emergency supplemental appropriations bill dealing largely with funding for the conflict in the Middle East, but which also contained minimum wage and tax provisions. H.R. 1591 was adopted but was vetoed by the President. A new supplemental appropriations bill (H.R. 2206) — which included minimum wage and tax provisions — was adopted and signed into law (May 25, 2007, as P.L. 110-28).

This report will be updated as developments warrant.

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Minimum Wage in the 110th Congress

On May 25, 2007, the President signed into law a supplemental appropriations bill (H.R. 2206, P.L. 110-28) which included an increase in the federal minimum wage with special provisions for American Samoa and the Commonwealth of the Northern Mariana Islands (CNMI). Under the act, the federal minimum wage will increase to \$5.85 an hour on the 60th day after enactment. Thereafter, in steps, it will rise to \$7.25 per hour by the summer of 2009. The minimum wage for Samoa and the CNMI will increase in smaller amounts until the \$7.25 rate has been reached.

The Fair Labor Standards Act (FLSA) of 1938, as amended, is the primary federal statute in the area of minimum wages and certain related labor standards issues (e.g., overtime pay, child labor, industrial homework, and sweatshop regulation). It is supplemented by state standards in most of the states: some of which with minima significantly in excess of the federal minimum wage.

Minimum wage legislation in the 110th Congress has undergone a series of more-or-less complicated steps. *Phase one* began on January 10, 2007, when the House of Representatives adopted a single purpose (or stand alone) bill (H.R. 2) to increase the federal minimum wage, in steps, to \$7.25 per hour — and, incrementally, to extend its coverage to the Commonwealth of the Northern Mariana Islands. The vote was 315 ayes to 116 nays. On February 1, the Senate adopted a substitute minimum wage bill (H.R. 2) with extensive tax and related incentives for business included (94 yeas, 3 nays). Here, however, a non-substantive complication arose. Traditionally, revenue bills have been initiated by the House and, then, have moved to the Senate. H.R. 2, as passed by the House of Representatives, was not a revenue measure (dealing solely with the minimum wage), though revenue provisions were attached in the Senate.

The House Committee on Ways and Means, in *phase two*, quickly produced a new bill (H.R. 976) — not a minimum wage bill, *per se*, but containing revenue provisions that could be added to H.R. 2 were that option adopted. The House approved H.R. 976 on February 16 (360 ayes to 45 nays) and sent it to the Senate where it was read and placed on the Senate Legislative Calendar.

On March 20, in *phase three*, a supplemental appropriations bill, providing funding for the conflict in the Middle East (with other matters), was introduced in the House (H.R. 1591). It was considered and, on March 23, was approved (218 yeas to 212 nays), and subsequently passed by the Senate on March 29 (51 yeas to 47 nays). H.R. 1591 contained, among other things, minimum wage and tax components with a new provision altering the manner in which the wage should be applied to American Samoa (in addition to the CNMI proposal).

The President had early indicated that he would veto any measure that required a time table for withdrawal of U.S. troops from Iraq. H.R. 1591 did have such time tables and the President vetoed the measure on May 1. When, on May 2, the bill was presented to the House in an effort to override the President's veto, the vote was 222 yeas to 203 nays, lacking the two-thirds necessary for an override.

Shortly thereafter, on May 8, in *phase four*, a modified version of H.R. 1591 was introduced as H.R. 2206. The new bill, like that which had been vetoed, contained minimum wage and tax language and altered the wage rate for American Samoa and for the CNMI. H.R. 2206 was passed by the House (221 yeas to 205 nays) on May 10 and dispatched to the Senate. In the Senate, there were now a series of disagreements with respect to the measure and, as a result, a much reduced bill was sent back to the House (on a voice vote) where it encountered new House amendments. Ultimately, a conference report produced yet another draft and, on May 24, the bill was agreed to by both houses and was dispatched to the White House.

On May 25, 2007, the new bill (H.R. 2206) was signed by the President, becoming P.L. 110-28. In its final form, it included amendments to the FLSA and altered the minimum wage treatment of workers in American Samoa and the CNMI.

Introduction

The FLSA is an umbrella statute that deals with a series of labor standards. These fall, roughly, into three categories: first, minimum wage (Section 6 of the act); second, overtime pay (Section 7); and third, child labor (Section 12). Section 3 of the act defines the concepts used throughout the statute and, thereby, limits or qualifies its wage/hour and child labor provisions.¹

Traditionally, Congress has mandated broad general minimum wage coverage, and then has specified select categories of workers who are not to be covered by the act. Section 13 provides a body of exemptions (or special treatment) for segments of industry and/or groups of workers. In these areas, the Secretary of Labor has been granted wide interpretive powers — though these have not been without limit.

The minimum wage aspects of the FLSA have undergone changes on numerous occasions: in 1949, 1955, 1961, 1966, 1974, 1977, 1989, 1996 and, now, 2007. (See **Table 1.**) The act began in a limited way, encompassing labor standards essentially for industrial workers. In 1938, the minimum wage was 25 cents an hour; the work week was 44 hours. With amendment, coverage provisions of the act were expanded while, over the years, the rate has been raised to \$5.15 per hour (going up to \$7.25 per hour by late summer 2009), with a 40-hour week. For more than 40 hours worked in a week, overtime pay (time-and-a-half) would need to be paid.

Since the late 1970s, coverage patterns seem to have leveled off with few new workers, by classification, having been brought under the act. Moreover, in real

¹ This report focuses narrowly upon the federal minimum wage. Other related issues are considered separately in other CRS products.

terms, the value of the minimum wage rate has been on a downward slope. The minimum wage reached its peak value in 1968 at \$1.60 an hour and, since then, generally, has declined in terms of constant dollars. To equal its 1968 peak in purchasing power, it would currently need to be in excess of \$9.50 an hour. When fully implemented in the summer of 2009, the minimum wage will still be only \$7.25 an hour — without taking into account intervening economic change.²

Table 1. Federal Minimum Wage Rates, 1938-2009

Public Law	Effective Date	Rate
P.L. 75-718 (Enacted June 25, 1938)	October 1938	\$0.25
	October 1939	0.30
	October 1945	0.40
P.L. 81-393 (Enacted October 26, 1949)	January 1950	0.75
P.L. 84-381 (Enacted August 12, 1955)	March 1956	1.00
P.L. 87-30 (Enacted May 5, 1961)	September 1961	1.15
	September 1963	1.25
P.L. 89-601 (Enacted September 23, 1966)	February 1967	1.40
	February 1968	1.60
P.L. 93-259 (Enacted April 8, 1974)	May 1974	2.00
	January 1975	2.10
	January 1976	2.30
P.L. 95-151 (Enacted November 1, 1977)	January 1978	2.65
	January 1979	2.90
	January 1980	3.10
	January 1981	3.35
P.L. 101-157 (Enacted November 17, 1989)	April 1990	3.80
	April 1991	4.25
P.L. 104-188 (Enacted August 20, 1996)	October 1996	4.75
	September 1997	5.15
P.L. 110-28 (Enacted on May 25, 2007)	July 2007	5.85
	July 2008	6.55
	July 2009	7.25

Fair labor standards issues are handled jointly by the states and the federal government. The states took up the question early in the 20th century, enacting a variety of measures dealing with minimum wages and related subjects, and they have continued to do so. Various states currently have minimum wage rates (and other standards) that are higher than those established by the federal FLSA, with Washington state at the top with a state minimum wage standard of \$8.07. (See **Table 2.**) Speaking generally, where there is overlapping jurisdiction, the higher standard (the one most favorable to workers) takes precedent — and where

² See CRS Report RS20040, *Inflation and the Real Minimum Wage: Fact Sheet*, by Brian W. Cashell.

applicable, the federal statute supercedes lower standards of the states. Some aspects of fair labor standards (notably, vacations, rest breaks and lunch breaks) have traditionally been treated as state matters.

**Table 2: Status of State Minimum Wage Rates
(as of January 2008)**

Jurisdictions with Minimum Wage Rates <i>Higher than</i> the Federal FLSA		
Alaska (\$7.15)	Maine (\$7.00)	North Carolina (\$6.15)
Arizona (\$6.90)	Maryland (\$6.15)	Ohio (\$7.00)
Arkansas (\$6.25)	Massachusetts (\$8.00)	Oregon (\$7.95)
California (\$8.00)	Michigan (\$7.15)	Pennsylvania (\$7.15)
Colorado (\$7.02)	Minnesota (\$6.15)	Rhode Island (\$7.40)
Connecticut (\$7.65)	Missouri (\$6.65)	Vermont (\$7.68)
Delaware (\$7.15)	Montana (\$6.25)	Virgin Islands (\$6.15)
District of Columbia (\$7.00)	Nevada (\$6.33)	Washington (\$8.07)
Florida (\$6.79)	New Hampshire \$6.50)	West Virginia (\$6.55)
Hawaii (\$7.25)	New Jersey (\$7.15)	Wisconsin (\$6.50)
Illinois (\$7.50)	New Mexico (\$6.50)	
Iowa (\$7.25)	New York (\$7.15)	
Jurisdictions with Minimum Wage Rates <i>at the Same Level</i> as the Federal FLSA (\$5.85)		
Guam	Nebraska	Texas
Idaho	North Dakota	Utah
Indiana	Oklahoma	Virginia
Kentucky	South Dakota	Wyoming
Jurisdictions with Minimum Wage Rates <i>less than</i> the Federal FLSA		
American Samoa ^a	Commonwealth of the Northern Mariana Islands ^a	Puerto Rico ^a
Kansas (\$2.65)	Georgia (\$5.15)	
Jurisdictions with <i>No</i> State Minimum Wage Requirement		
Alabama	Mississippi	Tennessee
Louisiana	South Carolina	

Source: U.S. Department of Labor, Wage and Hour Division, Employment Standards Administration, [<http://www.dol.gov/esa/minwage/america.htm>], visited March 2008.

Note: Coverage patterns vary from one jurisdiction to another: some new changes are already scheduled. Some jurisdictions have a structured minimum wage system (i.e., different rates for various industries, sizes of firms, etc.). The table refers to the highest standard applicable under current state law. In some jurisdictions, the rate is linked to the federal FLSA.

- a. For American Samoa, the CNMI and certain industries in Puerto Rico, the minimum wage rate is lower than the general federal minimum wage but, under P.L. 110-28, will rise, in steps, to meet standards set by federal legislation.

Under federal law, special treatment may be afforded to certain youth workers, to tipped employees, and to persons with a disability. The federal FLSA provides a wage floor, as some perceive it, for fairness in the workplace. Where state statutes also deal with these matters (and deal with them in a manner more favorable to workers), the state standard would normally prevail, going beyond the federal statute and enacting higher standards. Individuals, however, are not allowed to bargain away provisions of the federal law.

Of the state standards, many run roughly parallel to the FLSA, but they need not do so — and often do not. Even with this more or less dual coverage, not all workers are covered by wage/hour standards, though most are. Coverage patterns (including patterns of exemption) need to be taken into account when considering the potential impact of changes in federal wage/hour law. Because of variations in coverage (with extensive administrative rules governing implementation and enforcement of wage/hour law), it may be perilous to suggest who is (or is not) covered by the requirements of statute without careful assessment.

Logistics of Application and Targeting

Adequacy of the Minimum Wage

In the academic literature and political debate, people often tend to speak of the minimum wage as *a livable wage* or *a decent wage*. But, it is not clear that such concepts are always interpreted in a consistent manner.

In statute, the minimum wage is reasonably clearly defined: \$5.85 per hour (and, subsequently, increasing to \$6.55 and to \$7.25) for most (but not all) covered workers.³ However, the FLSA does not translate that dollar amount into social or human terms. For example, some have questioned whether \$5.85 an hour is actually a “living wage.” The livability of the minimum wage, in some measure, depends upon the context in which it is earned: for example, whether one resides in an urban or a rural area. It may also be dependent upon the earner’s role within the family (a breadwinner or a youth contributing to a combined family income) and the number of persons in a family unit.

Under current law, a minimum wage worker employed full-time and full-year (40 hours per week for 52 weeks at \$5.85) would earn \$12,168.⁴ A full-time worker, under age 20 and paid at the statutorily permissible sub-minimum rate (\$4.25 per

³ The minimum wage will go up to \$5.85 an hour in July 2007. However, for purposes of this report, we will assume that the wage remains at its current \$5.15 per hour.

⁴ Following the same pattern, a worker may be earning, in two years and sixty days after enactment of H.R. 2206, a total of \$15,080 for 40 hours a week at \$7.25 per hour through 52 weeks a year.

hour), could earn \$8,840 — for the same hours of work even when performing the same duties as a straight minimum wage worker.⁵

Since much minimum wage work is also part-time and/or part-year, estimating actual annual income for minimum wage workers can be problematic. Some workers, earning the minimum wage, find, either through their own designs (school, sports, family responsibilities) or through the absence of alternative work, that their year-long income may fall substantially below an annualized figure. While some minimum wage work may provide a fringe benefit component, such fringes are often not available until a worker has been employed for a specific period of time: a period that many minimum wage workers may not reach. Under present law, the concept of a minimum wage is limited to a cash wage.

As set forth in **Table 3**, one sees the level of income regarded as a poverty threshold, at various family sizes, for eligibility for certain federal assistance programs. The extent to which the poverty guidelines are realistic can be, and have been, debated. The guidelines have no direct connection with the federal minimum wage, but they are frequently cited in discussions of minimum wage and are used by some analysts as a measure of the adequacy of the wage floor.⁶ If the estimated annual income (\$12,168) for a minimum wage worker is compared to the poverty guidelines in **Table 3**, the income is just above the poverty line for a family of one in the 48 contiguous states, the District of Columbia, and Hawaii — and below the poverty line for families of any other size.

To Whom Should *Not Less Than the Minimum Wage* Be Paid?

FLSA minimum wage requirements have always been subject to exceptions: examples include the tipped worker, the youth worker, the person with disabilities. In some cases, an exception has been made on the basis of the type of work performed: for example, in the early days of the act, agricultural labor — and, even now, certain small business establishments. (See discussion below.)

A collateral question involves the issue of need — which, it would seem, also involves a variety of socio-economic questions. If the worker is engaged primarily for “pin money,” then his or her need may be less extreme than a fellow worker who supports a parent or is saving for tuition at the local university. Here, one may want to ask: Should compensation be based upon the needs of the worker, his productivity, or simply based upon the demand for services.

⁵ After 90 consecutive days with an individual employer, a qualifying youth employee would ordinarily see his or her wage increased to \$5.15 an hour — unless he or she breaks the consecutive days rule and moves on to another employer or simply drops out of work. The youth sub-minimum wage was not altered under H.R. 2206.

⁶ The table is provided as a reference. Minimum wages are not a federal assistance program but, rather, are payment for performance that comes directly from the employer.

**Table 3. Poverty Guidelines,
All States and the District of Columbia (2008)**

Size of Family Unit	Poverty Guideline		
	States and District of Columbia	Alaska	Hawaii
1	\$10,400	\$13,000	\$11,960
2	14,000	17,500	16,100
3	17,600	22,000	20,240
4	21,200	26,500	24,380
5	24,800	31,000	28,520
6	28,400	35,500	32,660
7	32,000	40,000	36,800
8	35,600	44,500	40,940

Source: U.S. Department of Health and Human Services, “Annual Update of the HHS Poverty Guidelines,” 73 *Federal Register*, January 23, 2008, pp. 3971-3972.

Note: For family units with more than eight members in the 48 states and the District of Columbia, add \$3,600 for each additional member. For Alaska, add \$4,500, and for Hawaii, add \$4,140. Poverty guidelines are not defined for Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or other U.S.-related insular jurisdictions.

Who Should Pay the Minimum Wage?

How the minimum wage worker is defined, and the intent of Congress in establishing/maintaining a federal minimum wage, are critical to consideration of the concept: Who should pay the minimum wage?

If one thinks of the minimum wage as an anti-poverty measure, then it is more likely to be considered as *needs-based* and focused on moving the worker out of poverty. Conversely, if the minimum wage is *productivity based*, but fails to provide income sufficient to maintain an individual (or his dependents), then some supplemental means may be necessary through which to increase the worker’s income.

The Minimum Wage vs. the EITC. In 1975, Congress established the Earned Income Tax Credit (EITC). As amended, it provides a tax credit to certain low-wage workers. To qualify, a family must reside in the United States — unless absent for military duty. While oriented toward persons with children, some childless adults may also qualify. But, the program can also be complex. It is not simply a matter of taking a job and collecting one’s pay — as would be true even with a minimum wage job. Historically, it has been subject to over-claims of benefits — and, on occasion, to under-claims as well.⁷

⁷ See CRS Report RL31768, *The Earned Income Tax Credit (EITC): An Overview*, and CRS Report RS21477, *The Earned Income Tax Credit (EITC): Legislative Issues*, both by (continued...)

Proponents of the EITC argue that it affords firms that operate on a slim margin an opportunity to remain in business and to provide employment, even if at low wages. However, the EITC is conditional upon the low earnings of the worker, not the marginal profitability of the employer. It makes no distinction between businesses (employers) that are struggling economically and those that are doing well. Some view the EITC *as a supplement to* the minimum wage, predicated upon the needs of a worker rather than upon his productivity; others, *as a substitute for* future minimum wage increases.

Employer/business acceptance of the EITC and hostility toward the minimum wage may reflect an economic reality: with the EITC, the taxpayer subsidizes the employer's wage costs; with the minimum wage, those costs fall directly upon the employer or businessperson and indirectly upon the consumer.

Small Businesses. The FLSA's small business exemption allows certain qualifying employers to be exempt from the FLSA minimum wage requirements. In general (though the exemption is complex), this could include firms "whose annual gross volume of business done" is less than \$500,000, though individual employees of such firms, engaged in interstate commerce, may be covered individually.

Over time, there has been pressure from the small business community to expand this exemption. Proponents have argued that small firms may be adversely affected — or even driven out of business — by having to pay their workers the minimum wage. However, since there is no test of profitability, the exemption is enjoyed by prosperous and struggling businesses alike.

General Demographics of the Minimum Wage Workforce

Precise data on the minimum wage workforce are difficult to develop. Not everyone is covered by the minimum wage. Some low-wage workers may be paid at *or below* the federal minimum wage; but, because of exemptions built into the statute, they may not be affected by changes Congress may make: for example, the youth sub-minimum wage workers or persons subject to the *tip credit* provisions of the act. Their pay may continue at whatever rate may seem justified to management and acceptable to the worker. Conversely, some employers may choose to pay the statutory minimum because it is a convenient and generally recognized basic rate — even where workers are not subject to the act.

In addition, persons employed at or below the federal minimum wage may change jobs (and economic status) with some frequency, moving into and out of the workforce in search of higher incomes or in response to non-work-related factors:

⁷ (...continued)
Christine Scott.

school, pregnancy or, perhaps, a change in marital status. Some workers may be multiple jobholders and, as a result, may be tabulated in a different manner.⁸

Not all workers *covered* under the FLSA are covered in precisely the same way. Thus, where statistics are available, we may be speaking of *the low-wage worker* rather than *the minimum wage worker* covered under the FLSA.

Who Are the Minimum Wage Workers?

In 2007, about 1.729 million workers, 16 years of age and up, who were paid hourly rates, earned at or below the federal minimum wage of \$5.85 per hour. About 267,000 were paid at the minimum rate; about 1.462 million were paid below the minimum.⁹

In absolute numbers, according to data provided by the Bureau of Labor Statistics (BLS), persons working at or below the minimum are about as likely to be adults as youth depending upon one's calculation (see the discussion below), more likely to be female than male, and more likely to be white than of another race. Further, persons working at or below the minimum wage are more likely to be working part-time than full-time. Part-time workers are considerably more likely to be women than men.

Critics of the minimum wage often point to a minimum wage worker who is a young person, working for "pin money" and being supported by a suburban middle-class family. Conversely, proponents of a higher minimum often view the low-wage workforce as largely adult (and the head of a household) and, thus, suggestive of more serious needs.

Statistics can be used to support either interpretation. If, for example, using 2007 data, one defines a youth as someone between 16 and 19 years of age, then about 21.6% of workers, paid hourly at or below the minimum wage, are youths and about 78.4% are adults. If one's definition is more expansive, defining youth as between 16 and 24 years of age, then about 47.1% of persons earning at or below the minimum wage are youths and 52.9% are adults. Thus, even with an expansive

⁸ Surveys of income may collect information only with respect to a worker's main job.

⁹ About 76.5 million workers, of a civilian noninstitutional workforce of around 150 million, were paid hourly rates in 2005. In transmitting numbers of minimum wage workers, the Bureau of Labor Statistics has stated: "*It is not possible to clearly determine* whether workers surveyed in the CPS [Current Population Survey] are actually covered by the Fair Labor Standards Act ... or by individual State minimum wage laws. Thus some workers reported as earning an hourly wage of \$5.15 may not in fact be covered by Federal or State minimum wage laws. Also, there are a number of States that have minimum wages that exceed the Federal minimum wage. At the same time, the presence of a sizable number of workers with wages below the prevailing Federal minimum wage does not necessarily indicate violations of the FLSA or applicable State laws, because there are numerous exclusions and exemptions to these minimum wage statutes." (Emphasis added.) See "Characteristics of Minimum Wage Workers: 2006," Bureau of Labor Statistics, U.S. Department of Labor, February 27, 2007, footnote to Table 3.

definition of youth (16 to 24 years of age), over half of the minimum wage workforce is 25 years of age or over.

Among hourly workers, paid at or below the general minimum rate, about 68.4% are women and about 31.6% are men. Although the data are imprecise because of definitional questions with respect to race and ethnicity, it is clear that the majority of workers earning at or below the federal minimum wage are white.¹⁰

In 2007, about 56.2% of workers at and below the minimum wage were employed on a part-time basis; about 43.5% were full-time. Some 73.2% of part-time workers were female and 26.8% were males. (Some statistical variation may result from a small number of multiple jobholders.)

Low-wage workers may differ from better paid workers in other ways. For example:

- Low-wage employment may tend to be less stable than more highly compensated employment, with workers experiencing involuntary joblessness or moving in and out of the labor force because of discouragement, quitting to seek better wages and working conditions, or for personal reasons.¹¹
- Full-time low-wage employment is not synonymous with full-year employment. Estimating the annual income of minimum wage workers may be problematic since many full-time minimum wage workers may not be employed on a full-year basis. There may be periods when they are not working (or not working at the minimum wage).

The minimum wage is a cash wage. Fringe benefits earned by a minimum wage worker are likely to be less than those of more highly paid persons, widening the gap between the economic well-being of the minimum wage worker and others.

The Size of the Minimum Wage Workforce

In 2007, as noted above, there were roughly 1.729 million workers, paid at hourly rates, who earned at or below the federal minimum wage of \$5.85 per hour beginning in July 2007. They constitute about 2.3% of hourly paid workers from an aggregate of about 75.9 million hourly paid workers. This figure indicates an upward movement of one-tenth of a percentage point from 2.2% in 2006 and, collectively,

¹⁰ BLS divides the low-wage workforce into “white,” “black,” and “Asian” within the context of race and provides a separate classification of “Hispanic or Latino.” Concerning this classification, see Mary Bowler, et al., “Revisions to the Current Population Survey Effective January 2003,” *Employment and Earnings*, February 2003, pp. 4-7, and 14.

¹¹ See “*Characteristics of Minimum Wage Workers, 2006*,” Bureau of Labor Statistics, U.S. Department of Labor, March 24, 2008.

represents the smallest percentage of hourly workers earning at or below the minimum wage in the United States in recent times.¹² (See **Table 4**.)

The numerical decline does not necessarily indicate improved economic status for the workers. It may, rather, suggest a progressive movement up from the statutory (fixed) minimum wage — in response to inflationary pressures — but without improving one's general economic status. Had the minimum wage been indexed for inflation to provide a sustained purchasing power (its highest rate was in February 1968), its current level would now be in excess of \$9.50 per hour.

The decline in the real value of the minimum wage (in policy terms) would appear to have several implications. If the statutory minimum wage remains at a fixed rate while the general wage level rises because of inflation and/or productivity improvements, the number of minimum wage workers could reasonably be expected to experience a further decline. Fewer and fewer people could be expected to be employed at the standard minimum wage — even though their general economic condition may not have improved. This would not mean that the low-wage workforce has shrunk. Rather, some may suspect, an increasingly large number of persons would be employed at wages slightly above the declining real value of the statutorily defined minimum.¹³

Under this scenario, the federal minimum wage could be effectively repealed by attrition and, in that context, an argument might be made that since so few would actually be employed at rates at or below the statutory federal minimum, the problem of the working poor could be handled through other more narrowly targeted means — possibly through transfers of income rather than through strictly work-related earnings. This may run counter to public policy that income from work is generally preferable to entitlements financed through taxation.

With the increase in the wage rate under H.R. 2206, there ought to be some change in the structure of wage rates; though, with increases spread over two plus years, it may be difficult to assess. As noted in **Table 2**, some state minimum wage rates have moved in to fill the gap of a declining federal minimum wage. However, such considerations have been uneven. What impact these state regulations could have is yet to be assessed.

¹² The early history of the FLSA was marked by a relatively sparse coverage which, through the 1960s and 1970s, was generally broadened giving the act, roughly, its present form.

¹³ As the rate proceeds upward, it may be difficult to be sure whether an increase results from the federal minimum wage or from a higher state standards — without doing considerable research.

Table 4. Number and Percent of Workers Paid Hourly at the Minimum Wage or Less

Year	Number in Thousands	As a Percentage of Hourly Paid Workers
1979^a	6,913	13.4
1980^a	7,773	15.1
1981^a	7,824	15.1
1982	6,496	12.8
1983	6,338	12.2
1984	5,963	11.0
1985	5,538	9.9
1986	5,060	8.8
1987	4,697	7.9
1988	3,927	6.5
1989	3,162	5.1
1990^a	3,228	5.1
1991^a	5,283	8.4
1992	4,921	7.7
1993	4,332	6.7
1994	4,127	6.2
1995	3,655	5.3
1996^a	3,724	5.4
1997^a	4,754	6.7
1998	4,427	6.2
1999	3,340	4.6
2000	2,710	3.7
2001	2,238	3.1
2002	2,168	3.0
2003	2,100	2.9
2004	2,003	2.7
2005	1,882	2.5
2006	1,692	2.2
2007	1,729	2.3

Source: United States Bureau of Labor Statistics.

a. Years in which a legislated change in the federal minimum wage took effect.

Some Collateral Issues

Minimum Wage: The Issue of Indexing

Varying through the years, the minimum wage reached its inflation-adjusted peak in 1968 — and has since generally declined in real value. A recent CRS analysis suggests that the minimum would need to be raised to slightly in excess of \$9.50 per hour to reach its 1968 level.¹⁴

During the initial debates on wage/hour legislation in 1937-1938, it was suggested that a reasonable rate (for that period) would have been 40 cents an hour. Under prolonged objections from southern industrialists, the figure was dropped to 25 cents per hour. Thus, Congress avoided a regional option and southern industrialists avoided stricter standards.

The minimum wage, set in statute, remains at a fixed level until the Congress alters it through legislation. Failure of the minimum wage to maintain parity with the cost of living has been a continuing concern and some have suggested that it might usefully be indexed to reflect changes in the cost of living or shifts in other economic variables. This would provide a more regular pattern of increase. On the other hand, some contend that there really isn't a need for a federal minimum wage at all.

Indexation was discussed during the early 20th century as an approach to wage stability. It was last a subject of extensive congressional debate during the 1970s and in the context of the 1988-89 FLSA amendments. In each case, it was rejected with Congress seeming to prefer direct control of legislative action. Several states have experimented with indexation and, thus far, none has as yet reversed the process. No federal action has yet been taken and the issue was not part of the debate over H.R. 2206 and the several related bills. Still, the issue remains alive and seems to have attracted attention at the state level.¹⁵

The Youth Sub-Minimum Wage

During the 1960s and 1970s (as retail and service industries, major employers of youth workers, came under the FLSA), the issue of a youth sub-minimum wage became active. Proponents of the concept urged that youth workers be paid at a rate lower than the standard minimum wage, regardless of experience or the quality of work they performed. In each case and after heated debate, the issue was defeated.

When George H. W. Bush became President in 1989, he agreed to sign a new minimum wage increase if, among other things, it included a general sub-minimum wage for workers who were beginning new employment. A first bill was vetoed; but,

¹⁴ CRS Report RS20040, *Inflation and the Real Minimum Wage: Fact Sheet*, by Brian W. Cashell.

¹⁵ See CRS Report RL30927, *The Federal Minimum Wage: The Issue of Indexation*, by Gerald Mayer; and CRS Report RL33791, *Possible Indexation of the Minimum Wage: Evolution of Legislative Activity*, by William G. Whittaker.

following extended discussions, Congress adopted a new bill with a sub-minimum wage for youth.¹⁶

The youth program, affecting persons under 20 years of age, was divided into two parts. The first part covered a 90-day period with no conditions beyond a willingness of the worker to accept the work. The second part was more complex, mandating training through a second 90-day period. After 180 days, the regular minimum would be required. The program was experimental: from April 1990 to April 1993. As it turned out, almost no one used the program and it was not extended.¹⁷

During the Clinton Administration, the minimum wage came up as a floor amendment to the “Small Business Job Protection Act of 1996,” essentially a tax bill but with the sub-minimum wage as one of its provisions. The measure was passed with the sub-minimum wage in place (P.L. 104-188).¹⁸ As enacted, the bill allows an employer to pay a youth (under 20 years of age) a sub-minimum wage of \$4.25 per hour through the first 90 consecutive days of employment with an employer.

Having set forth a youth sub-minimum rate, Congress then raised the general minimum rate to \$5.15 an hour — but without linking the youth worker option to the new standard. Unless Congress takes specific action to increase the youth rate (and it did not do so in the 2007 legislation), it will remain at \$4.25 per hour — even as the general minimum wage is raised. Legislatively, the youth rate is a separate issue from the general wage floor.¹⁹

The “Tip Credit” Provision

Minimum wage coverage was expanded, during the 1960s and 1970s, to provide protection for retail and service workers. Some of these workers were “tipped” and their employers argued, successfully, that they (the employers) ought not to be responsible for paying such tipped employees a full minimum wage. Through the years, the level of the so-called tip credit has varied.

¹⁶ See “Minimum-Wage Impasse Finally Ended,” *Congressional Quarterly: Almanac*, 101st Congress, 1st Session, 1989, *Congressional Quarterly Inc.*, 1990, pp. 333-340.

¹⁷ P.L. 101-157, Section 6: training wage. See U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, *Report to the Congress on the Training Wage Provisions of the Fair Labor Standard Act Amendments of 1989 from the Secretary of Labor*, Robert B. Reich, April 21, 1993, 24 pp.; and Kevin G. Salwen, “Subminimum Wage of \$3.62 an Hour Is on Deathbed but Draws Few Mourners,” *The Wall Street Journal*, March 12, 1993, p. A4.

¹⁸ On President Clinton’s views, see *Public Papers of the Presidents of the United States: William J. Clinton*, Book II, 1996. Washington: United States Government Printing Office, 1998, p. 1317. In some states, this arrangement (still on the books) may not be permissible.

¹⁹ See “Congress Clears Wage Increase With Tax Break for Business,” *Congressional Quarterly: Almanac*, 104th Congress, 2nd Session, 1996, *Congressional Quarterly Inc.*, 1997, pp. 7-3 to 7-9.

Under the 1996 FLSA amendments, Congress provided a tip credit of 50% of the then standard minimum wage \$4.25 (or \$2.12 an hour). So long as an employee received tip income on a regular basis sufficient to reach the statutory minimum wage, when combined with an employer contribution of \$2.13 per hour, the employer had no further minimum wage obligation. (The credit deals only with the amount not to be paid by the employer of a tipped employee.) The tipped employee would receive a full minimum wage: either through tips or, where tips were insufficient, in combined tips and cash. Then, Congress increased the federal minimum wage, in steps, from \$4.25 to \$5.15 per hour. The tip credit increased to \$3.02 per hour: that is, the amount the employer does not need to pay to his or her regularly tipped employees. (See **Table 5**.)

Table 5: The Tip Credit Under the 2007 Amendments to the Fair Labor Standards Act: Dollars per Hour and Percentages

Statutory Federal Minimum Wage	Cash Wage from Employer, Mandatory under Statute	Tip Credit (Between \$2.13 and the Statutory Minimum Wage)	Tip Credit as a % of the Minimum Wage	Mandatory Employer Cash Contributions as a % of Minimum Wage
\$5.15 (to July 24, 2007)	\$2.13	\$3.02	58.6%	41.4%
\$5.85 (July 24, 2007)	\$2.13	\$3.72	63.6%	36.4%
\$6.55 (July 24, 2008)	\$2.13	\$4.42	67.5%	32.5%
\$7.25 (July 24, 2009)	\$2.13	\$5.12	70.6%	29.4%

When Congress increased the federal minimum to \$5.15 per hour (and, now, in steps, to \$7.25), the threshold income for tipped employees remained at \$2.13 per hour. As the minimum wage increases to \$7.25 an hour, the tip credit will rise to \$5.12. Tipped employees do receive the minimum wage — albeit in a combination of tips and cash wages.

Legislative Linkage: Moving a “Clean Bill”

The original FLSA proposals (1937-1938) were in the form of freestanding legislation: focusing narrowly upon wage/hour and child labor protections. As a procedural matter, the next seven rounds of minimum wage increases (1949, 1955, 1961, 1966, 1974, 1977, and 1989), though each provided various changes in the FLSA itself, took the form of freestanding legislation. Non-FLSA or non-wage/hour

issues were not addressed as part of the package with minimum wage and related concerns.

In 1996, minimum wage and related FLSA amendments were brought to the House floor as an amendment to a broad package of industry-related proposals: the “Small Business Job Protection Act of 1996.” Indeed, the FLSA was a relatively small part of the overall package. While some components of the wage/hour portion of the bill had been the subject of hearings during the 104th Congress, others had not been, nor had the body of FLSA-related provisions been considered by committee as a unit. During the spring and summer of 1996, the joint minimum wage/tax revision measure moved through Congress, and was signed by President Clinton on August 20, 1996 (P.L. 104-188).²⁰

When minimum wage legislation came up during the 106th Congress in 1999-2000, it largely followed the 1996 pattern. It combined tax revisions that were beneficial to the business community with changes in the FLSA — including an increase in the minimum wage.²¹ By this point, the two issues — a minimum wage increase for low-paid workers and tax breaks for employers (whether or not they employed workers paid at the minimum wage) — had become linked in policy terms: that is, that the former could not go forward, it seemed, without the latter.

Linkage, although a tradition only since the 104th Congress (1996) and used only during that one occasion, has appeared to become a frequent focus of the minimum wage debate during succeeding Congresses. “We came to the table,” observed Representative Rick Lazio (R-NY), “with the realization that a wage increase was fair but we also came to the table with a desire to protect the small business people who will end up bearing the direct burden of any wage increase that we pass here today.”²² Senator Don Nickles (R-OK) concluded, looking ahead to the 107th Congress: “It kind of fits, frankly, to do it as a part of the tax package next year.”²³ Some may argue that, in practice, linkage is a matter of fairness and equity with respect to those who are called upon to fund an increased minimum wage.

Not all observers concur. Amy Borrus, writing in *Business Week*, termed the tax/minimum wage bill “a monument to legislative logrolling,” stating that “its

²⁰ See CRS Issue Brief IB95091, *The Minimum Wage: An Overview of Issues Before the 104th Congress*, by William G. Whittaker (out of print, but available from the author). See also Alissa J. Rubin, “Congress Clears Wage Increase with Tax Breaks for Business,” *Congressional Quarterly*, August 3, 1996, pp. 2175-2177; and Julie Kosterlitz, “A Bounty For Business,” *National Journal*, October 26, 1996, pp. 2289-2292.

²¹ In the Senate, minimum wage increases had been included in H.R. 833, as amended, the “Bankruptcy Reform Act of 1999;” in the House, it was part of H.R. 3081, the “Small Business Tax Fairness Act of 2000.” Though each chamber passed a version of the minimum wage legislation, the proposals died at the close of the 106th Congress. See CRS Report RL30690, *Minimum Wage and Related Issues Before the 106th Congress: A Status Report*, by William G. Whittaker (out of print, but available from the author).

²² *Congressional Record*, March 9, 2000, p. H860.

²³ Bureau of National Affairs, *Daily Labor Report*, December 6, 2000, p. A12.

veneer of virtue made it the perfect vehicle for a tax-break extravaganza.”²⁴ Representative Charles Rangel (D-NY) seemed to sum up the views of critics of linkage: “We should not be forced to bribe the wealthy in our society in order to secure a simple dollar more per hour for the poorest working American families.”²⁵ Thus, some may argue, that proposals to raise the minimum wage have become, in practice, a vehicle for legislating economic benefits for employers and others in higher income brackets.²⁶

Activity in the 110th Congress

The concept of linkage, though utilized only once (in 1996), continues to be an active theme in public policy discourse. As a result, the bills that have been considered by the House and Senate can, for the most part, be characterized as being either a clean bill or one that contains a variety of non-wage issues.

H.R. 2: The Fair Minimum Wage Bill of 2007

Over a number of years, since the 1990s, an increase in the minimum wage was viewed by some as involving simultaneously an increase in the rate for the Commonwealth of the Northern Mariana Islands. Those issues arose once more during consideration of legislation of the 110th Congress.

Coverage for the Northern Mariana Islands? In 1947, following World War II, the CNMI was placed under U.S. control as part of the Trust Territory of the Pacific Islands. During the 1970s, it entered into a *Covenant of Association* with the United States and established its current Commonwealth status.

Western-style jobs for specific wages and trade union development were slow to emerge in the Northern Marianas. Under the Commonwealth, responsibility for labor standards was divided: the U.S. Department of Labor governing overtime pay while the insular authorities were charged with creation of a minimum wage. In addition, the Commonwealth retained control over immigration and exercised the right to market goods made in the islands under a *Made in America* label.

²⁴ Amy Borrus, “Why Business Isn’t Bucking This Minimum-Wage Hike,” *Business Week*, November 1, 1999, p. 55. Borrus added, “And that’s how lobbyists managed to squeeze maximum benefits for their clients out of the minimum-wage measure.”

²⁵ Bureau of National Affairs, *Daily Labor Report*, March 9, 2000, p. A8.

²⁶ In general, see Bureau of National Affairs, *Daily Labor Report*, April 25, 2001, pp. A6-A7; and Juliet Eilperin, “Business Seeks Tax Breaks in Wage Bill: Pay Raise Is Viewed as Best Chance at Cuts,” *The Washington Post*, May 14, 2001, pp. A1 and A12. In an article, “Business Coalition Holds Firm for Bush Tax Cut Package,” *Congress Daily*, April 19, 2001, reporters Stephen Norton and Charlie Mitchell state that trade association and business supporters of the Bush Administration’s tax package have shown “remarkable discipline in resisting the urge to press for inclusion of their own pet items” in the tax package, “mindful of assurances from GOP leaders that there will be a ‘second bite at the apple’ for business-specific provisions next year or even later this year — possibly paired with a bill to raise the minimum wage.”

Through the next 10 years, there was very little presence of American officials in the islands. In that interim, the Commonwealth (Saipan) developed a thriving garment and tourism industry. In the context of the former, various American distributors arranged to have garments made in the islands where wages were lower than the federal minimum. By the late 1980s, several Members of Congress expressed concern about what was perceived to have been sweatshop conditions as workers from China, the Philippines, and other low-wage states were recruited to augment the native labor force. Several committees of the Congress conducted hearings on conditions in the CNMI and legislation was introduced that would have imposed, over time, regular U.S.-style minimum wage standards. None of these labor standards measures was enacted.²⁷

A Clean Bill -v- Industry Incentives. In the House, a new minimum wage bill (H.R. 2) was introduced during the first days of the 110th Congress. Representative George Miller (D-CA), a primary sponsor of the bill, observed: “For 10 years, we have struggled to have this vote, and now we are finally going to have it.”²⁸ The bill moved through the legislative process without collateral amendment. As adopted on January 10, 2007, it would have raised the minimum wage, in steps, to \$7.25 an hour and would have extended the act’s requirements, incrementally, to the Commonwealth of the Northern Mariana Islands. The vote was 315 yeas to 116 nays.²⁹

In the Senate, there had been speculation of some willingness to add tax sweeteners to a minimum wage bill in order to secure the requisite number of votes for passage — or simply because tax cuts for business were regarded in a positive light.³⁰ Senator Max Baucus (D-MT), chair of the Committee on Finance, in hearings held January 10, 2007, explored the impact of the minimum wage upon small businesses. “This Committee,” he stated, “has the opportunity to help small businesses through tax incentives that stimulate their rates of formation and growth.” The Senator affirmed: “Let us raise the minimum wage. Let us help small businesses to cope. And let us do so as much as possible through the Committee process.”³¹ However, Senator Edward Kennedy (D-MA) generally supported a clean bill — dealing only with the minimum wage. Senator Kennedy reportedly affirmed: “It is going to be clean.”³²

On January 10, 2007, H.R. 2 was called up on the Senate floor, touching off sporadic discussion of the relative merits of a wage increase. On February 1, the

²⁷ See CRS Report RL30235, *Minimum Wage in the Territories and Possessions of the United States: Application of the Fair Labor Standards Act*, pp. 10-13, by William G. Whittaker.

²⁸ *Congressional Record*, January 10, 2007, p. H307.

²⁹ *Congressional Record*, January 10, 2007, p. H308. See also Bureau of National Affairs, *Daily Labor Report*, December 13, 2006, p. A1.

³⁰ Bureau of National Affairs, *Daily Labor Report*, November 15, 2006, p. A12.

³¹ Press release from Senator Max Baucus, Committee on Finance, January 10, 2007.

³² Bureau of National Affairs, *Daily Labor Report*, November 17, 2006, p. A6.

wage bill came up for a vote and was approved by 94 ayes to 3 nays. In the process, the measure had been expanded to include a series of tax and related benefits reportedly of interest to employers — especially *small business*, but of more general interest as well. The two bills — the clean bill from the House and the composite bill from the Senate — would, it seems, need to be reconciled.³³ However, since the Senate-passed version of H.R. 2 now contained tax measures (in excess of \$8 billion), it was initially held at the desk awaiting some initiative from the House.

H.R. 976: The Small Business Tax Relief Act of 2007

Traditionally, as Congress has operated, matters dealing with finance must originate in the House, and thus there was some concern about the action taken by the Senate with respect to H.R. 2 (discussed above). Representatives Rangel, Chairman of the Ways and Means Committee, with Representative Jim McCrery (R-LA), developed a “package of small-business tax breaks” that “could clear the way for final action on stalled legislation to raise the minimum wage.”³⁴ Rangel reportedly observed: “This is a bipartisan bill providing critical momentum for the bipartisan effort to raise the minimum wage.” McCrery added, according to *The Daily Labor Report*: “I believe it is important to couple a minimum wage increase with tax cuts to help businesses that will be hurt by higher costs.”³⁵ The Rangel/McCrery bill was brought to the House floor and, on February 16, passed by 360 yeas to 45 nays.³⁶ On February 17, the bill was read for the first time in the Senate and placed on the Senate Legislative Calendar. On February 26, it was read a second time and given Calendar No. 58.

Thus, two bills with implications for the minimum wage had come from the House to the Senate: one, a direct increase in the minimum wage and the other a package of small business offsets. There were substantial differences between the two bills (H.R. 2 and H.R. 976), not the least of which had been the cost: roughly \$1.3 billion for the House bill and in excess of \$8 billion for the Senate bill. In addition, there was concern that some modification of the bills (minimum wage and other non-wage provisions) might be necessary.

H.R. 1591: Emergency Supplemental Appropriations (2007)

In late March, Congress took up the *emergency supplemental appropriations bill* for conflicts in Iraq and Afghanistan, and other purposes.

Action in the House. On March 20, 2007, Representative David Obey (D-WI) introduced a new bill that would have funded a portion of the conflicts in Iraq and Afghanistan but that also included a series of other related and unrelated

³³ *Congressional Record*, February 1, 2007, pp. S1499-S1500. The Senate version of H.R. 2 can be found in the *Congressional Record*, February 1, 2007, pp. S1500-S1511.

³⁴ Alan Ota, “Rangel’s Move to Add Tax Breaks to Minimum Wage Hike Could Break Logjam,” *CQ Today*, February 8, 2007, p. 5. See also Rebecca Kimitch, “Rules Allow Tax Package to Come to Floor Under Suspension of the Rules,” *CQ.com*, February 14, 2007.

³⁵ Bureau of National Affairs, *Daily Labor Report*, February 12, 2007, p. A14.

³⁶ *Congressional Record*, February 16, 2007, p. H1860.

concerns: among them, a provision for an increase in the federal minimum wage, its extension to the Commonwealth of the Northern Mariana Islands, long an issue in contention, and a renewed application of the minimum wage to American Samoa (see comment below). In general, the Obey bill dealt with the minimum wage (except with the addition of American Samoa) in the same manner as H.R. 2 and, by inference, H.R. 976.³⁷

Coverage for American Samoa? Since 1938, American Samoa had been under the minimum wage rates of the FLSA; but, given the distance from the mainland and the attributes of the insular economy, it was not enforced.³⁸ In 1956, Congress placed American Samoa under a *special industry committee* (the SIC — in the same manner as Puerto Rico and the Virgin Islands). Under the SIC, minimum rates are designated by a committee dispatched by the Secretary of Labor. After exploring economic conditions in the islands, the determinations of the SIC become law — unless Congress were to override them as it did in 1986. During the 1980's and 1990's, Puerto Rico and the Virgin Islands were removed from the SIC jurisdiction and placed fully under the FLSA. But, economic conditions in Samoa were such that Congress decided it should continue under SIC jurisdiction.

In terms of private sector employment, American Samoa has only one major industry: the canning and processing of tuna fish. Other concerns operating in American Samoa, for the most part, have supportive connections with the tuna canneries. Were the minimum wage to be raised (and were the tuna canneries to leave the island in search of even lower-paid workers, as has been intimated), the economy of Samoa could face hardships.

Under H.R. 1591, the current insular minimum wage (\$3.26 per hour) would be raised, over time, to \$7.25 per hour. No hearings were held on the issue. On March 22, the emergency supplemental appropriation (the Obey bill) was called up for floor debate. The measure attracted considerable attention, but mainly (for all practical purposes) as it related to military operations. Application of the full minimum wage to American Samoa, basically, was not discussed. On March 23, the composite measure was adopted by the House (218 yeas to 212 nays) and was dispatched to the Senate. There, it was read twice and placed on the Legislative Calendar under General Orders, Calendar No. 84.³⁹

Action in the Senate. On March 26, 2007, the Senate took up H.R. 1591. Senator Robert Byrd (D-WV) opened the discussion, which would take place over several days, with an amendment to strike “all after the enacting clause” and then to insert a new text.⁴⁰ Thus, debate on the supplemental proceeded.

On March 27, 2007, Senator Kennedy proposed a new minimum wage amendment to be added to H.R. 1591. The Kennedy amendment, in substance, was

³⁷ *Congressional Record*, March 22, 2007, pp. H2892-2893.

³⁸ Concerning American Samoa, see CRS Report RL34013, *The Federal Minimum Wage and American Samoa*, by William G. Whittaker.

³⁹ *Congressional Record*, March 23, 2007, p. H2999.

⁴⁰ *Congressional Record*, March 26, 2007, pp. S3760-S3777.

the same as that already included in H.R. 2 and approved by the Senate on February 1st — namely, to raise the minimum wage, in steps, to \$7.25 per hour and to extend it to the CNMI. Reference to American Samoa had been dropped.

Senator Kennedy explained: “The House of Representatives has passed its own minimum wage. Because of the parliamentary complexities,” however, “we were unable to get this issue resolved.” And again, Kennedy suggested: “I am delighted to debate the minimum wage, but I think we had a good debate ... so I do not think that is necessary.”⁴¹ Ultimately, the Kennedy amendment was added to H.R. 1591.⁴² On March 29, 2007, the bill was adopted by a vote of 51 yeas to 47 nays.⁴³

Final Congressional Action and Presidential Veto. With the Senate and House versions of H.R. 1591 in disagreement, Representative Obey called for a conference. Representative Jerry Lewis (R-CA) then moved to instruct the conferees to support the House’s position “with respect to a timetable for the withdrawal of troops from Iraq. This motion,” he stated, “*which I will oppose*, puts Members on record as either fully supporting our troops or agreeing to a surrender date in Iraq.”⁴⁴ (Italics added.) The Lewis motion was approved (with Mr. Lewis voting in opposition) and conferees were appointed.⁴⁵ No reference was made to minimum wage issues though they were included.

On April 25, 2007, the conference report (H.Rept. 100-107) was called up for debate. In speech after speech, Members responded to the essential thrust of the measure: support for or opposition to the conflict in Iraq. Almost the only Member to mention the FLSA was Representative Rangel. “I am glad that both chambers of congress, in passing this Conference Report, have spoken to the fact that an increase in the Federal minimum wage enjoys broad bipartisan, bicameral support,” he stated, “as does the approximately \$5 billion in small business tax relief also included in the agreement.” Rangel continued: “I hope that combining the tax provisions of this bill with a Federal minimum wage increase will encourage the President’s quick action on signing these provisions into law without further delay.”⁴⁶ Included in the Conference Report, which was adopted in the House by 218 yeas to 208 nays, were provisions for an increase in the minimum wage for American Samoa and for the CNMI.⁴⁷

In the Senate, a similar pattern was followed. The conflict in the Middle East dominated the discussion. Only marginally was the minimum wage considered. Senator Christopher Dodd (D-CY) lionized the “hard-working men and women” who

⁴¹ *Congressional Record*, March 27, 2007, p. S3793.

⁴² *Congressional Record*, March 27, 2007, pp. S3817-S3818.

⁴³ *Congressional Record*, March 29, 2007, p. S4093.

⁴⁴ *Congressional Record*, April 19, 2007, p. H3665.

⁴⁵ *Congressional Record*, April 19, 2007, pp. H3671-H3672.

⁴⁶ *Congressional Record*, April 25, 2007, p. H4156.

⁴⁷ *Congressional Record*, April 25, 2007, pp. H4157-H4158. The Senate had recessed.

had waited for “nearly 10 years” for an increase in the minimum wage.⁴⁸ Senator Kennedy termed the minimum wage increase in the bill “appropriate” and noted, “many of our fighting forces have husbands or wives back at home who are struggling to make ends meet.” Kennedy added: “Ten percent of military spouses earn between \$5.15 and \$7.25 per hour.”⁴⁹ The vote on the Conference Report was 51 yeas to 46 nays.⁵⁰

On May 1, 2007, the President vetoed H.R. 1591 and returned it to the Congress. In his message, he stated that the measure sets “an arbitrary date for beginning the withdrawal of American troops” from Iraq, provides “billions of dollars in spending and other provisions that are unrelated to the war,” and “is unconstitutional because it purports to direct the conduct of the operations of the war in a way that infringes upon the powers vested in the Presidency” as Commander in Chief of the Armed Forces. “For these reasons, I must veto this bill.”⁵¹

On May 2, 2007, immediately following receipt of the veto message, the House took up the override. The vote was 222 yeas to 203 nays. With two-thirds not having voted to override, the veto was sustained.⁵²

H.R. 2206: The Second Supplemental (2007)

A week later, on May 8, 2007, Representative Obey introduced a new supplemental: the “U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act” (H.R. 2206). The bill contained language dealing with the minimum wage, modifying coverage with respect to American Samoa, and extending coverage to the CNMI.

Parliamentary Maneuvers. H.R. 2206 was reported to the House on May 9, debate on the resolution commencing on May 10. On a vote of 221 yeas to 205 nays, the House approved the bill.⁵³ A second proposal, H.R. 2207 (“Agricultural Disaster Assistance and Western States Emergency Unfinished Business Appropriations Act, 2007”) was subsequently adopted and added to H.R. 2206.⁵⁴

The Senate, however, disagreed with the House on the military aspects of the collective measure. On May 15, the Senate began consideration of H.R. 2206 — a process that continued through several days and eventually came to involve

⁴⁸ *Congressional Record*, April 26, 2007, p. S5137.

⁴⁹ *Congressional Record*, April 26, 2007, p. S5141.

⁵⁰ *Congressional Record*, April 26, 2007, p. S5153.

⁵¹ *Congressional Record*, May 2, 2007, p. H4315.

⁵² *Congressional Record*, May 2, 2007, pp. H4325-H4326. Chairman Obey affirmed: “... this bill is first, last and foremost about the war. It is about how we get our troops out of the war.” See *Congressional Record*, May 2, 2007, p. H4316. Discussion of the minimum wage did not come up during debate on the override.

⁵³ *Congressional Record*, May 10, 2007, pp. H4866-H4867.

⁵⁴ *Congressional Record*, May 10, 2007, pp. H4879-H4880. The vote on H.R. 2207 was 302 yeas to 120 nays.

representatives of the House.⁵⁵ The Senate had proposed a very general bill, a placeholder, and had sent it to conference with the House. Just hours before the new House vote, a proposal was refined and presented in two parts. Part one represented the non-military expenditures (yeas, 348; nays, 73); part two, the issues dealing with funding for the conflict in the Middle East (yeas, 280; nays, 142).⁵⁶ The Senate promptly concurred (yeas, 80; nays, 14).⁵⁷ On May 25, 2007, the measure was signed by the President (P.L. 110-28).

Changes in the Wage Rates: 2007. The final bill contained a wide variety of supplemental measures. With respect to the minimum wage, the bill contained the following provisions.

The General Minimum Wage:

An increase to \$5.85 per hour beginning on the 60th day following enactment: roughly, July 25, 2007.

An increase to \$6.55 an hour, beginning 12 months after the 60th day following enactment: roughly, July 25, 2008.

An increase to \$7.25 an hour (and to remain at that level until changed by Congress), beginning 24 months after the 60th day following enactment: roughly, July 25, 2009.

The Minimum Wage and the CNMI:

The minimum wage shall be \$3.55 an hour, beginning on the 60th day following enactment.

The minimum wage shall be raised by 50 cents an hour beginning each year after the date of enactment and continuing until the rate in the CNMI is equal to \$7.25 (or the amount specified in Section 6(a)(1) of the act).

The Minimum Wage and American Samoa:

The minimum wage in “each industry and classification” in American Samoa will be increased by 50 cents an hour, beginning on the 60th day after the date of enactment of this act, and by 50 cents per hour beginning each year thereafter on the date of enactment until the rate in American Samoa reaches \$7.25 per hour (or the amount specified in Section 6(a)(1) of the act).

⁵⁵ *Congressional Record*, May 15, 2007, pp. S6115-S6118; and May 17, 2007, pp. S6215-S6219, S6254.

⁵⁶ *Congressional Record*, May 24, 2007, pp. H5730-H5738 and H5776-H5911.

⁵⁷ *Congressional Record*, May 24, 2007, p. S6823.

A Study Commissioned:

Beginning on a date “that is 60 days after the date of enactment of this Act,” the Secretary of Labor (through the Bureau of Labor Statistics) will conduct a study to

- (1) assess the impact of the wage increases required by this Act ... and
- (2) project the impact of any further wage increase, on living standards and rates of employment in American Samoa and the Commonwealth of the Northern Mariana Islands.

Not later than eight months after the date of enactment of this act, “the Secretary of Labor shall transmit to Congress a report on the findings of the study....”

The Voting Pattern on Minimum Wage. Other aspects of the FLSA (e.g., the youth sub-minimum wage, the tip credit provisions, treatment of the handicapped, the small business exemption) were not dealt with in the minimum wage adjustments of 2007. The minimum wage aspects of H.R. 2206 merely (1) raised the general minimum wage and (2) altered the application of the wage as it applies to American Samoa and to the CNMI.

H.R. 2, the initial proposal on the minimum wage in the House, was a *clean* bill, solely relating to changes in the level of the minimum wage. But, once in the Senate, various additions were added to the bill (in excess of \$8 billion dollars) before it was adopted, and for a series of reasons internal to Congress, the measure died. Thus, only H.R. 2 (and only in the House) was there a vote that could be discerned as a vote on the minimum wage. The remaining bills (H.R. 976, H.R. 1591 and, finally, H.R. 2206) were all composite measures with no identifiable vote solely on minimum wage issues.

Comment and Summary

In the 110th Congress, the minimum wage seemed to occupy a larger role in the House than in the Senate. Four bills with implications for the minimum wage were sent from the House to the Senate.

The first was H.R. 2. It had passed as a clean bill in the House early in the session; but, once in the Senate, the bill was enhanced with a series of tax and related proposals of interest to industry. The added revenue measures in particular rendered compromise with the House difficult.

H.R. 976, a package of small business offsets, had been arranged in the House Committee on Ways and Means that might have been used to augment H.R. 2, still in the Senate. Before the House and Senate could reach a compromise on the minimum wage and tax issues, a new bill, H.R. 1591, was passed by the House and sent to the Senate. Although intended to fund American troops in the Middle East, H.R. 1591 contained a series of unrelated funding proposals — including an increase in the minimum wage, its adjustment for the CNMI and American Samoa, and a series of tax and related issues of interest to the business community. The bill also included specific timetables to be met in Iraq, which rendered the bill anathema to

the White House. Ultimately, it was vetoed and the House sustained the President's veto.

A final bill (the fourth) was a restructuring of H.R. 1591. The new bill (H.R. 2206) was contentious in the House (which passed the measure) but was rejected, in its House-passed form, by the Senate. Like H.R. 1591, H.R. 2206 contained language dealing with the minimum wage. The Senate removed all after the enacting clause, inserted a placeholder, and passed H.R. 2206, sending the bill to conference. In conference, accommodation was reached. The House (and then the Senate) agreed to the restructured H.R. 2206, sending it to the President who, on May 25, 2007, signed the bill — which still included minimum wage language.