

U. S. DEPARTMENT OF LABOR
Wage and Hour Division
Washington

WAGE-HOUR LAW ENFORCEABLE-----
SAYS DIVISION'S ANNUAL REPORT

Experience during its first year of operation shows that the Fair Labor Standards Act of 1938, the law establishing a national "floor for wages and ceiling for hours," is enforceable; that it has increased the wage rate of thousands of workers in each of the industrial states; and that it has won every court test on its constitutionality to date, the Wage and Hour Division will inform Congress today (Monday) in its first annual report.

The report outlines the Division's activities right up to December 31, 1939, from the beginning of the calendar year. Outstanding among the facts reported are:

1. The Act has recently been held constitutional in separate actions by four federal judges. It has suffered no setbacks on this score.
2. The Wage and Hour Division will have 700 inspectors in the field by the end of June. "Such a staff," the report says, "should make it possible to do an effective enforcement job."
3. On an annual basis this would require an appropriation of about \$7,700,000.
4. In 139 legal actions begun by the Division and by the Department of Justice, enforcement of the Wage and Hour law has encountered only two setbacks in court. A third court defeat occurred in an action in which the Division was the defendant.
5. In every one of the Department of Justice's 37 criminal actions which have been completed, the prosecution has been successful. In each instance the defendants have pleaded guilty.

Fines totaled \$247,850. Payment of \$132,350 of this was suspended conditional on full restitution by the employers to employees of wages illegally withheld. Twenty-six cases are pending.

6. More than \$1,000,000 in back payments has been agreed upon for more than 18,000 employees. Of this more than \$250,000 already has been paid.
7. Now that the Division's activities have been decentralized into 15 regions, interest of wage earners in obtaining relief through the law is at a peak. More than 1,000 complaints a week are currently being received by Wage-Hour offices. This volume is greater than the previous high when the Act first went into effect.
8. Slightly more than half the complaints are regarding overtime rather than minimum wages.
9. More than 650,000 workers in the continental United States presumably have been given wage rate increases to comply with the 30-cent minimum which went into effect October 24 last without any noticeable dislocation of employment. Nearly 2,400,000 wage earners had their workweek shortened to 42 hours unless given time and a half for overtime.
10. Additional wage rate increases will come to an estimated 526,500 employees if minimum wage recommendations by industry committees pending are given Administrative approval.

While the report notes that the Fair Labor Standards Act provides that the Administrator in his Annual Report to Congress "shall include such recommendations for further legislation as he may find it advisable," it says, "the Administrator is not prepared at the present time to make any recommendations for additional legislation." Forty-two bills to amend the Act, which are now pending in Congress, are listed in an appendix to the report.

"One of the most gratifying things about the development of Wage and

Hour regulations during the past year," said Colonel Philip B. Fleming, who is directing the activities of the Division, in making public the report, "has been the apparent ease with which American industry adapted itself to the October changes which were written in the Act as originally passed. When the 25-cent minimum went into effect in the fall of 1938, there were reports of it causing considerable unemployment. Certain operations closed down with a protest that the rate made continuation an economic impossibility. It was discovered later that most of these occurrences were fall seasonal shutdowns which, in 1938, had been arranged to coincide with the inauguration of the minimum wage. Of course, in the fall of 1939 conditions were somewhat different. The war had begun in Europe and we were in a movement of industrial activity and increasing prices. When the 30-cent minimum went into effect we had our field force (it was non-existent the year before) on the lookout for such occurrences, shutdowns or lay-offs, but our field men were unable to report any."

Colonel Fleming also commented on the decree enjoining the Hump Hair Pin Company filed in Chicago with the consent of the defendants on the last court day of the calendar year, as typical of the cooperation of the Wage and Hour Division with the Children's Bureau, under Miss Katherine Lenroot, in enforcing the child labor provisions of the Fair Labor Standards Act. "This Company was sending out hair pins to 300 families to be mounted on cards," Colonel Fleming said. "Scores of children were engaged in this work to the injury of their education and health. When brought to court the Company agreed to pay restitution to the workers totaling \$100,000 because they had not been able to make 30 cents an hour at the piece rates set. And the Company agreed to accept the responsibility to see that children under 16 years of age are not

hereafter engaged in its manufacturing operations."

The defendants in Wage-Hour cases have not all been small corporations. A case is pending against the Atlantic Coast Line Railroad, a \$250,000,000 corporation, charging this railroad avoided minimum wage payments to 1,700 negro track workers by charging them high rents for company "houses," some of which, it is charged were abandoned box cars. A move to examine the payroll records of Montgomery Ward & Company, of Chicago, a \$150,000,000 corporation, was challenged by the company as unconstitutional and led to an early declaration of the Act's constitutionality in a federal court.

The two defeats in court actions noted above are these: A federal judge in Iowa held that the manufacture of buttons from shells came within the broad exemption for the fishing industry written in the Act. The government has appealed from this decision. A federal judge in Florida denied a request for an order enjoining a lumber company from discriminating against employees making complaints to the Division. Denial was on a question of fact and not of law, the judge holding that the evidence did not support the Division's allegations.

The Division has had to defend suits to enjoin enforcement of the Act, the report adds. A Puerto Rico sugar company challenging the Act's constitutionality asked the Federal District Court there to enjoin the Division. This suit resulted in the first decision sustaining the constitutionality of the Act. A Florida citrus packing concern sued to have itself declared within the "area of production," the phrase used by Congress in exempting the processing of certain agricultural products. This concern asked to have the regulations of the Administrator defining the phrase declared invalid as applied to its

operation. This suit resulted in a third setback for the Division in court, the judge granting a temporary injunction against the Division. The Government has appealed this decision.

"Significant effects may be expected" in 36 states from the raising of the wage floor from 25 to 30 cents an hour and the lowering of the "ceiling for hours" from 44 to 42 hours on October 24 last, the report said. In 26 of these states there were 5,000 or more workers receiving less than 30 cents an hour. There are 10 other states in which the change to 30 cents an hour affected less than 5,000 but in which the hourly change affected more than 10,000 workers. The 12 states in which a small number of covered employees were directly affected by the October changes are Vermont, Delaware, the Dakotas, and the Mountain States. The percentage of covered workers receiving less than 30 cents an hour prior to October, range from about one half of 1 percent in Ohio to nearly 40 percent in Mississippi. The manufacturing industry with the largest number of workers who were receiving less than 30 cents was the saw mill industry. There were about 96,000 of these low wage workers in this industry. Altogether about 650,000 covered employees in the continental United States were getting less than 30 cents an hour prior to October 24, 1939 and presumably have been raised to that rate since. These figures in the report were from a study made in the spring of 1939 by the Bureau of Labor Statistics.

The "floor for wages" in the Wage-Hour structure is no longer one 30-cent level, the report notes. Two wage orders are in effect as the result of the industry-committee method of reaching the 40-cent-an-hour goal of the Act. One is for the hosiery industry with a 32½-cent floor for seamless hosi.

wages and a 40-cent for full-fashioned wages. The other is for the textile industry with a $32\frac{1}{2}$ -cent floor, which meant a further wage increase for 175,000 wage earners in this major industry which employs 650,000 workers altogether. A third wage order, establishing a 40-cent floor for a small industry, the millinery industry, goes into effect January 15.

Six other industry committees have made recommendations for industries comprising in all every major operation in the textile-apparel industrial group. Should these remaining recommendations be approved by the Administrator after public hearings, the report points out, the industry-committee method will have increased the wage rates of an estimated 526,500 employees. It is estimated that 352,500 of these are among the 650,000 mentioned having presumably received a wage rate increase due to the statutory change to 30 cents of October 24 last. In other words, if the recommendations are approved, these 352,500 workers will have their wage rate increased to 30 cents by statute and to some higher minimum up to 40 cents an hour by the industry-committee method. An additional 174,000 workers who were getting at least 30 cents an hour but less than 40 cents an hour also will have a wage increase by the industry-committee method should all pending recommendations be approved.

With the appointment of a railroad industry committee in December the Division for the first time applies the industry-committee method of establishing minimum wages to other than the textile-apparel field. The railroad industry, while one of the highest paying industries in America, has among its more than one million employees some one hundred thousand workers getting less than 40 cents an hour. The bulk of these are maintenance-of-way employees in the South and Southwest.

Regarding this section of the report Colonel Fleming said, "It is planned to appoint about six more industry committees during the first half of 1940. Two considerations limit the number of industries to be dealt with. The first is the number of wage studies available that have been made in industries. The second is the amount of money available to make additional wage studies. Present plans call for the early appointment of committees in the leather, paper, carpet and rug industries."

As to the section of the report dealing with the certification of employment of learners at less than the minimum rate as directed by the Act "to the extent necessary in order to prevent curtailment of opportunities for employment," Colonel Fleming had this to say: "In December the United States Chamber of Commerce said that there was a shortage of skilled workers in the country. The Chamber mentioned particularly the construction trades, which for the most part are not in interstate commerce and are not covered by our Act, and the metal trades where beginners are usually taken on at rates higher than \$2.40 for an eight-hour day. Despite this the Chamber mentioned the Wage-Hour Division's policy in certifying apprentices and learners as being in part responsible for the situation alleged.

"In surveying the field in keeping with our responsibility 'to prevent curtailment of opportunities for employment,' we have not encountered shortages of skilled labor in areas where industries have been located long enough to train workers. Less than 1500 employers have applied for certificates allowing them to employ learners at less than the minimum. These exemptions are available to approximately 40,000 establishments in the textile and apparel industries alone. The fact that less than 1500 employers in low

wage industries have applied indicates that their currently increased production has not exhausted the skilled labor reserve in the ranks of the unemployed."

The report said: "The learner problem is not nearly so serious as had been anticipated. Many employers have long followed the practice of maintaining their skilled working forces by training beginners as apprentices or learners and starting them in at wage rates equal to or higher than the present statutory rates. By December 15, 1939, only 1396 individual employers had filed applications for special certificates. On that date, 62.5 percent of these applications had been favorably acted upon, 13.1 percent had been denied for insufficient facts to justify exemptions, and 24.4 percent were pending action."

As to handicapped workers, the report said: "Establishment of a minimum wage standard and its administration emphasize the problem of the handicapped workers. Congress, in the Fair Labor Standards Act, recognized the competitive disadvantage of individuals whose earning capacity is impaired by age, physical or mental deficiency or injury, and provided for their employment at wages lower than the applicable minimum under certificates issued by the Administrator pursuant to regulations....."

"By December 15, 1939, action had been taken on 4,800 applications, of which 1,312 were submitted by males and 3,488 by female workers. Roundly, half of those making applications (2,385) were granted special certificates."

An unsolved problem of Wage-Hour administration noted in the report is that of "sheltered workshops"--places producing goods conducted by charitable organizations in which the primary purpose is the rehabilitation of workers. It is necessary to prevent exploitation of handicapped workers and at the same time protect their employment opportunities.

The report says: "On March 28 a Sheltered Workshop Advisory Committee was named. The first meeting of the committee was held April 11 when it was decided to make a study of the 'sheltered workshop' problem under the Fair Labor Standards Act and to collect information on which to base recommendations to the Administrator. Plans were made for the formulation of a questionnaire to be mailed to all 'sheltered workshops' by the Wage and Hour Division.

"Questionnaires were sent to 428 sheltered workshops early in August. One hundred and seventy-eight replies had been received covering 9,890 'clients.'

"Practically all of the workshops paid some cash wages to their 'clients.' The average hourly wage for all clients covered by the survey was 25.5 cents. Fifty-one percent of the workers received less than 25 cents an hour, and 71.1 percent less than 30 cents an hour. Of 141 shops reporting on the extent to which wages were earned, 89 stated that wages were fully earned, and 52 reported that they contained an element of subsidy.....

"The Sheltered Workshop Advisory Committee is now formulating the recommendations it will make to the Administrator in the light of the data obtained from the questionnaire study."

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