

§ 783.23

1961 amendments is subject to the “old” provisions of the law and entitled to a minimum wage of at least \$1.15 an hour beginning September 3, 1961, and not less than \$1.25 an hour beginning September 3, 1963 (29 U.S.C. 206(a)(1)), unless expressly exempted by some provision of the amended Act. Such an employee is also entitled to overtime pay for hours worked in excess of 40 in any workweek at a rate not less than one and one-half times his regular rate of pay (29 U.S.C. 207(a)(1)), unless expressly exempt from overtime by some exemption such as section 13(b)(6). (Minimum wage rates in Puerto Rico, the Virgin Islands, and American Samoa are governed by special provisions of the Act (26 U.S.C. 206(a)(3); 206(c)(2).) Information on these rates is available at any office of the Wage and Hour Division.

§ 783.23 Pay standards for “newly covered” employees.

There are some employees whose individual activities would not bring them within the minimum wage or overtime pay provisions of the Act as it was prior to the 1961 amendments, but who are brought within minimum wage or overtime coverage or both for the first time by the new “enterprise” coverage provisions or changes in exemptions, or both, which were enacted as part of the amendments and made effective September 3, 1961. Typical of such employees are those who, regardless of any engagement in commerce or in the production of goods for commerce, are employed as seamen and would therefore have been exempt from minimum wage as well as overtime pay requirements by virtue of section 13(a)(14) of the Act until the 1961 amendments if so employed during that period, but who by virtue of these amendments are exempt only from the overtime pay requirements on and after September 3, 1961, under section 13(b)(6) of the amended Act. These “newly covered” employees for whom no specific exemption has been retained or provided in the amendments must be paid not less than the minimum wages shown in the schedule below for hours worked, computed, in the case of employees employed as seamen, in accordance with the special

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provisions of section 6(b)(2) which are discussed in subsequent sections of this part. Any “newly covered” employees who are not exempted by section 13(b)(6) because of their employment as seamen must be paid, unless exempted by some other provision, not less than one and one-half times their regular rates of pay for overtime, as shown in the schedule below.

Beginning	Minimum wage (29 U.S.C. 206(b))	Overtime pay (29 U.S.C. 207(a)(2))
Sept. 3, 1961 ..	\$1 an hour	None required.
Sept. 3, 1963 ..	No change	After 44 hours in a workweek
Sept. 3, 1964 ..	\$1.15 an hour	After 42 hours in a workweek.
Sept. 3, 1965 ¹ and thereafter.	\$1.25 an hour	After 40 hours in a workweek.

¹ Requirements identical to those for employees under “old” coverage. (Minimum wage rates for newly covered employees, in Puerto Rico, the Virgin Islands, and American Samoa are set by wage order on recommendations of special industry committees (29 U.S.C. 206(a)(3); 206(c)(2).) Information on these rates may be obtained at any office of the Wage and Hour and Public Contracts Divisions.)

THE STATUTORY PROVISIONS REGARDING SEAMEN

§ 783.24 The section 13(a)(14) exemption.

Section 13(a)(14) of the Fair Labor Standards Act exempts from the minimum wage and overtime pay requirements of the Act, but not from its child labor provisions, “any employee employed as a seaman on a vessel other than an American vessel”.

§ 783.25 The section 13(b)(6) exemption.

Section 13(b)(6) of the Act exempts from the overtime pay requirements of the Act, but not from its other requirements, “any employee employed as a seaman”.

§ 783.26 The section 6(b)(2) minimum wage requirement.

Section 6(b), with paragraph (2) thereof, requires the employer to pay to an employee, “if such employee is employed as a seaman on an American vessel, not less than the rate which will provide to the employee, for the period covered by the wage payment, wages equal to compensation at the hourly rate prescribed by paragraph (1) of this subsection for all hours during such period when he was actually on

duty (including periods aboard ship when the employee was on watch or was, at the direction of a superior officer, performing work or standing by, but not including off-duty periods which are provided pursuant to the employment agreement.)” The “hourly rate prescribed by” paragraph (1) of the subsection is the minimum wage rate applicable according to the schedule shown in § 783.23.

§ 783.27 Scope of the provisions regarding “seamen”.

In accordance with the above provisions of the Act as amended, an employee employed as a seaman is exempt only from its overtime pay provisions under the new section 13(b)(6), unless the vessel on which he is employed is not an American vessel. Section 13(a)(14) as amended continues the prior exemption, from minimum wages as well as overtime pay, for any employees employed as a seaman on a vessel other than an American vessel. Thus, to come within this latter exemption an employee now must be “employed as” a “seaman” on a vessel other than an “American vessel”, while to come within the overtime exemption provided by section 13(b)(6) an employee need only be “employed as” a “seaman”. The minimum wage requirements of the Act, as provided in section 6(b) and paragraph (2) of that subsection apply if the employee is “employed as” a “seaman” on an “American vessel”. The meaning and scope of these key words, “employed as a seaman” and “American vessel” are discussed in subsequent sections of this part. Of course, if an employee is not “employed as” a “seaman” within the meaning of this term as used in the Act, these exemptions and section 6(b)(2) would have no relevancy and his status under the Act would depend, as in the case of any other employee, upon the other facts of his employment, (§§ 783.18 through 783.20).

LEGISLATIVE HISTORY AND JUDICIAL
CONSTRUCTION OF THE EXEMPTIONS

§ 783.28 General legislative history.

As originally enacted in 1938, section 13(a)(3) of the Fair Labor Standards Act exempted from both the minimum

wage and overtime pay requirements “any employee employed as a seaman” (52 Stat. 1050). In 1949 when several amendments were made to the Act (63 Stat. 910), this exemption was not changed except that it was renumbered section 13(a)(14). In the 1961 amendments (75 Stat. 65), a like exemption was retained but it was limited to one employed as a seaman on a vessel other than an American vessel (section 13(a)(14)); an overtime exemption was provided for all employees employed as seamen (section 13(b)(6)), and those employed as seamen on an American vessel were brought within the minimum wage provisions (sec. 6(b)(2)).

§ 783.29 Adoption of the exemption in the original 1938 Act.

(a) The general pattern of the legislative history of the Act shows that Congress intended to exempt, as employees “employed as” seamen, only workers performing water transportation services. The original bill considered by the congressional committees contained no exemption for seamen or other transportation workers. At the joint hearings before the Senate and House Committees on Labor, representatives of the principal labor organizations representing seamen and other transportation workers testified orally and by writing that the peculiar needs of their industry and the fact that they were already under special governmental regulation made it unwise to bring them within the scope of the proposed legislation (see Joint Hearings before Senate Committee on Education and Labor and House Committee on Labor on S. 2475 and H.R. 7200, 75th Cong., 1st sess., pp. 545, 546, 547, 549, 1216, 1217). The committees evidently acquiesced in this view and amendments were accepted (81 Cong. Rec. 7875) and subsequently adopted in the law, exempting employees employed as seamen (sec. 13(a)(3)), certain employees of motor carriers (sec. 13(b)(1)), railroad employees (sec. 13(b)(2)), and employees of carriers by air (sec. 13(a)(4), now sec. 13(b)(3)).

(b) That the exemption was intended to exempt employees employed as “seamen” in the ordinary meaning of that word is evidenced by the fact that the chief proponents for the seamen’s