

because the primary purpose of this part is to indicate the effect of the Portal Act upon the future administration and enforcement of the Fair Labor Standards Act, with which the Administrator of the Wage and Hour Division is charged under the law. The discussion of the Portal Act in this part is therefore directed principally to those provisions that have to do with the application of the Fair Labor Standards Act on or after May 14, 1947.

(c) The correctness of an interpretation of the Portal Act, like the correctness of an interpretation of the Fair Labor Standards Act, can be determined finally and authoritatively only by the courts. It is necessary, however, for the Administrator to reach informed conclusions as to the meaning of the law in order to enable him to carry out his statutory duties of administration and enforcement. It would seem desirable also that he makes these conclusions known to persons affected by the law.⁴ Accordingly, as in the case of the interpretative bulletins previously issued on various provisions of the Fair Labor Standards Act, the interpretations set forth herein are intended to indicate the construction of the law which the Administration believes to be correct⁵ and which will guide him in the performance of his administrative duties under the Fair Labor Standards Act, unless and until he is directed otherwise by authoritative rulings of the courts or concludes, upon reexamination of an interpretation, that it is incorrect. As the Supreme Court has pointed out, such interpretations provide a practical guide to employers and employees as to

⁴See *Skidmore v. Swift & Co.*, 323 U.S. 134; *Kirschbaum Co. v. Walling*, 316 U.S. 517; Portal-to-Portal Act, sec. 10.

⁵The interpretations expressed herein are based on studies of the intent, purpose, and interrelationship of the Fair Labor Standards Act and the Portal Act as evidenced by their language and legislative history, as well as on decisions of the courts establishing legal principles believed to be applicable in interpreting the two Acts. These interpretations have been adopted by the Administrator after due consideration of relevant knowledge and experience gained in the administration of the Fair Labor Standards Act of 1938 and after consultation with the Solicitor of Labor.

how the office representing the public interest in⁶ enforcement of the law will seek to apply it. As has been the case in the past with respect to other interpretative bulletins, the Administrator will receive and consider statements suggesting change of any interpretation contained in this part.

[12 FR 7655, Nov. 18, 1947, as amended at 35 FR 7383, May 12, 1970]

§ 790.2 Interrelationship of the two acts.

(a) The effect on the Fair Labor Standards Act of the various provisions of the Portal Act must necessarily be determined by viewing the two acts as interrelated parts of the entire statutory scheme for the establishment of basic fair labor standards.⁷ The Portal Act contemplates that employers will be relieved, in certain circumstances, from liabilities or punishments to which they might otherwise be subject under the Fair Labor Standards Act.⁸ But the act makes no express change in the national policy, declared by Congress in section 2 of the Fair Labor Standards Act, of eliminating labor conditions "detrimental to the maintenance of the minimum standard of living necessary for health, efficiency,

⁶*Skidmore v. Swift & Co.*, 323 U.S. 134. See also *Roland Electrical Co. v. Walling*, 326 U.S. 657; *United States v. American Trucking Assn.*, 310 U.S. 534; *Overnight Motor Transp. Co. v. Missel*, 316 U.S. 572.

⁷As appears more fully in the following sections of this part, the several provisions of the Portal Act relate, in pertinent part, to actions, causes of action, liabilities, or punishments based on the nonpayment by employers to their employees of minimum or overtime wages under the provision of the Fair Labor Standards Act. Section 13 of the Portal Act provides that the terms, "employer," "employee," and "wage", when used in the Portal Act, in relation to the Fair Labor Standards Act, have the same meaning as when used in the latter Act.

⁸Portal Act, sections 1, 2, 4, 6, 9, 10, 11, 12. Sponsors of the legislation asserted that the provisions of the Portal Act do not deprive any person of a contract right or other right which he may have under the common law or under a State statute. See colloquy between Senators Donnell, Hatch and Ferguson, 93 Cong. Rec. 2098; colloquy between Senators Donnell and Ferguson, 93 Cong. Rec. 2127; statement of Representative Gwynne, 93 Cong. Rec. 1557.

and general well-being of workers.” The legislative history indicates that the Portal Act was not intended to change this general policy.⁹ The Congressional declaration of policy in section 1 of the Portal Act is explicitly directed to the meeting of the existing emergency and the correction, both retroactively and prospectively, of existing evils referred to therein.¹⁰ Sponsors of the legislation in both Houses of Congress asserted that it “in no way repeals the minimum wage requirements and the overtime compensation requirements of the Fair Labor Standards Act”¹¹ that it “protects the legitimate claims” under that Act,¹² and that one of the objectives of the sponsors was to “preserve to the worker the rights he has gained under the Fair Labor Standards Act.”¹³ It would therefore appear that the Congress did not intend by the Portal Act to change the general rule that the remedial provisions of the Fair Labor Standards Act are to be given a liberal interpreta-

tion¹⁴ and exemptions therefrom are to be narrowly construed and limited to those who can meet the burden of showing that they come “plainly and unmistakably within (the) terms and spirit” of such an exemption.¹⁵

(b) It is clear from the legislative history of the Portal Act that the major provisions of the Fair Labor Standards Act remain in full force and effect, although the application of some of them is affected in certain respects by the 1947 Act. The provisions of the Portal Act do not directly affect the provisions of section 15(a)(1) of the Fair Labor Standards Act banning shipments in interstate commerce of “hot” goods produced by employees not paid in accordance with the Act’s requirements, or the provisions of section 11(c) requiring employers to keep records in accordance with the regulations prescribed by the Administrator. The Portal Act does not affect in any way the provision in section 15(a)(3) banning discrimination against employees who assert their rights under the Fair Labor Standards Act, or the provisions of section 12(a) of the Act banning from interstate commerce goods produced in establishments in or about which oppressive child labor is employed. The effect of the Portal Act in relation to the minimum and overtime wage requirements of the Fair Labor Standards Act is considered in this part in connection with the discussion of specific provisions of the 1947 Act.

PROVISIONS RELATING TO CERTAIN ACTIVITIES ENGAGED IN BY EMPLOYEES ON OR AFTER MAY 14, 1947

§ 790.3 Provisions of the statute.

Section 4 of the Portal Act, which relates to so-called “portal-to-portal” activities engaged in by employees on or after May 14, 1947, provides as follows:

(a) Except as provided in subsection (b), no employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended, * * * on account of

⁹See references to this policy at page 5 of the Senate Committee Report on the bill (Senate Rept. 48, 80th Cong., 1st sess.), and in statement of Senator Donnell, 93 Cong. Rec. 2177; see also statement of Senator Morse, 93 Cong. Rec. 2274; statement of Representative Walter, 93 Cong. Rec. 4389.

¹⁰Cf. House Rept. No. 71; Senate Rept. No. 48; House (Conf.) Rept. No. 326, 80th Cong., 1st sess. (referred to hereafter as House Report, Senate Report, and Conference Report); statement of Representative Michener, 93 Cong. Rec. 4390; statement of Senator Wiley, 93 Cong. Rec. 4269, 4270; statement of Representative Gwynne, 93 Cong. Rec. 1572; statements of Senator Donnell, 93 Cong. Rec. 2133-2135, 2176-2178; statement of Representative Robison, 93 Cong. Rec. 1499; Message of the President to Congress, May 14, 1947 on approval of the Act (93 Cong. Rec. 5281).

¹¹Statements of Senator Wiley, explaining the conference agreement to the Senate, 93 Cong. Rec. 4269 and 4371. See also statement of Senator Cooper, 93 Cong. Rec. 2295; statement of Representative Robison, 93 Cong. Rec. 1499, 1500.

¹²Statement of Representative Michener, explaining the conference agreement to the House of Representatives, 93 Cong. Rec. 4391. See also statement of Representative Keating, 93 Cong. Rec. 1512.

¹³Statement of Senator Cooper, 93 Cong. Rec. 2300; see also statements of Senator Donnell, 93 Cong. Rec. 2361, 2362, 2364; statements of Representatives Walter and Robison, 93 Cong. Rec. 1496, 1498.

¹⁴*Roland Electrical Co. v. Walling*, 326 U.S. 657; *United States v. Rosenwasser*, 323 U.S. 360; *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697.

¹⁵See *Phillips Co. v. Walling*, 324 U.S. 490; *Walling v. General Industries Co.*, 330 U.S. 545.