

MAINE STATE LEGISLATURE

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Application of overtime provisions of the state minimum wage law to certain employers within the logging industry.

FACTS:

The Fair Labor Standards Act section 7 (a) (1) provides for a 40 hour workweek with payment of one and one-half times the regular rate of pay for all hours worked in excess thereof during any given week.

However section 7 (b) (3) of the Act states that no employer shall be deemed to have violated the overtime provisions of 7 (a) (1) if the following conditions exist: (1) when employees are employed for periods of not more than fourteen workweeks in the calendar year, (2) in an industry found by the Administrator of Hours and Wages to be of a seasonal nature, and (3) when such employees receive compensation for employment in excess of twelve hours in any workday, or for employment in excess of fifty-six hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed.

Section 7 (b) (3) applies to the (spring-freshet-driving, pulpwood-sap-peeling, and ice-and-snow-road hauling branches) of the logging industry.

ISSUE:

Does the overtime pay provision of the state minimum wage law apply to these employees within the logging industry subject to the terms of section 7 (b) (3) FLSA?

ANSWER:

Yes.

OPINION:

Section 18 of the Fair Labor Standards Act provides in part:

"No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum workweek lower than the maximum workweek established under this chapter. . . ."

Section 18 of FLSA clearly evinces the Congressional intent that where higher standards for employees are established by state minimum wage laws, then such higher state standards shall supersede the provisions of FLSA itself. Therefore it is necessary to compare the provisions of the state's minimum wage laws with analogous provisions of FLSA.

In the first instance it is necessary to determine which employees within the logging industry are subject to the terms of the Fair Labor Standards Act, and then the further determination must be made as to whether section 7 (a) (1) or 7 (b) (3) applies to said employers.

If all of the prerequisites for coverage under 7 (b) (3) do not exist, then employees must comply with the terms of 7 (a) (1) to wit: payment of overtime pay of one and one-half times the regular hourly wage rate for all work in excess of 40 hours per week.

Secondly, it is necessary to compare the applicable provisions of our state minimum wage law, 26 M.R.S.A. § 664 with the overtime payment provisions of FLSA described above.

When this comparison is made, the following conclusions result:

(1) If employers within the logging industry are subject to 7 (a) (1) FLSA, then the overtime pay provision of 26 M.R.S.A. § 664 does not apply.

(2) If employers within the logging industry are subject

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to the terms of 7 (b) (3) FLSA however, then the overtime pay provision of 26 U.S.C.A. § 664 will apply. (This is so, because the payment of time and one half for all hours worked in excess of 48 in any given week established by 26 U.S.C.A. § 664 is more favorable to employees than the payment of time and one half for all hours worked in excess of 86 in any one workweek as provided for under the terms of 7 (b) (3) FLSA.)

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