

MAINE STATE LEGISLATURE

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N I N E T Y - S E C O N D L E G I S L A T U R E

Legislative Document

No. 946

H. P. 1301

House of Representatives, February 20, 1945.

Transmitted by revisor of statutes pursuant to joint order.

Referred to Committee on Labor, sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Renouf of Biddeford.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-FIVE

AN ACT Relating to Minimum Wages and Maximum Hours.

Be it enacted by the People of the State of Maine, as follows:

R. S., c. 25, §§ 40-A - 40-P, additional. Chapter 25 of the revised statutes is hereby amended by adding thereto the following new sections to be numbered 40-A to 40-P, to read as follows:

'Sec. 40-A. Declaration of policy. It is declared to be the policy of sections 40-A to 40-P, inclusive:

I. To establish so far as and as rapidly as possible minimum wage and maximum hour standards at levels consistent with the health, efficiency and general well-being of workers, and

II. To safeguard existing minimum wage and maximum hour standards which are adequate to the health, efficiency and general well-being of workers from the effects of the serious and unfair competition resulting from wage and hour standards detrimental to the health, efficiency and general well-being of workers, and

III. To increase employment opportunities, and

IV. To be applicable to intrastate commerce.'

"Sec. 40-B. Definitions. As used in sections 40-A to 40-P, inclusive, "commissioner" shall mean the commissioner of labor.

"Director" shall mean the director of the wages and hours division.

"Employ" includes permit or suffer to work for wages.

"Employer" includes any individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons, acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the state of Maine, or any of its political subdivisions, any labor organization, other than acting as an employer, or any one acting in the capacity of officer or agent of such labor organization, or any corporation or benevolent organization which in the discretion of the commissioner is engaged in charitable, educational or benevolent work.

"Employee" includes any individual employed by an employer, but shall not include any individual employed in a bona fide executive capacity, as such terms are defined and delimited by regulations of the commissioner; and in agriculture.

"Industry" means a trade, business, industry, or branch thereof, or group of industries in which individuals are employed.

"Wage" means, except as the commissioner may provide under the provisions of section 40-L, legal tender of the United States, or checks on banks convertible into cash on demand at full face value thereof and shall not include tips or gratuities of any kind.

"Week" means any period of 7 consecutive days.

"Day" means any period of 24 consecutive hours.

"Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices, including any forestry or lumbering operations, performed by a farmer on a farm as a necessary incident to the above farming operations, including delivery to storage or to market or to carriers for transportation to market.'

"Sec. 40-C. Minimum wages. Every employer shall pay to each employee employed by him wages at the following rates:

I. During the first 4 years from the effective date of sections 40-A to 40-P, inclusive, not less than 40c an hour;

II. After the expiration of said 4-year period, not less than 45c an hour,

except that in any industry in which a minimum wage in excess of 45c an hour has been prescribed in an order of the commissioner issued under the provisions of 40-G, such minimum wage shall apply; and

III. At any time, not less than the rate prescribed in the applicable order of the commissioner issued under the provisions of section 40-G.'

'Sec. 40-D. Maximum hours. No employer shall employ any employee for more than 8 hours a day or 40 hours a week, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than $1\frac{1}{2}$ times the regular rate at which he is employed.

The provisions of the preceding paragraph shall not apply to any employee employed in such extraordinary emergencies as those resulting directly from fire, flood, storm, or similar natural forces, or epidemic of illness or disease, which require employment in excess of the hours specified in said paragraph in order that life, health, or property may be preserved; provided, however, that the employer shall pay each employee so employed at not less than his regular rate of pay for each hour employed in excess of the hours specified in the preceding paragraph; provided further, that in each such case the employer shall immediately notify the commissioner of such excess employment in such manner as the commissioner may require.

The provisions of the first paragraph of this section shall not apply to any employee engaged in domestic service in a private home; provided, however, that no such employee may be employed for more than 60 hours a week unless such employee is compensated for each hour in excess thereof at $1\frac{1}{2}$ times his regular rate of pay.'

'Sec. 40-E. Wage investigations; appointment of wage boards. For the purpose of carrying out the declared policy of sections 40-A to 40-P, inclusive, the commissioner, upon his own motion, may, or upon the petition of 100 or more residents of the state, shall investigate the wages paid to employees employed in any industry to ascertain whether any substantial number of such employees are receiving wages which are less than sufficient to maintain the employees in health, efficiency, and general well-being. If, as a result of investigation, the commissioner determines that any substantial number of employees employed in any industry are receiving such wages he shall appoint a wage board to recommend a minimum wage for such industry. The issuance of a wage order for an industry pursuant to the provisions of section 40-G shall not preclude the commissioner from again appointing a wage board in accordance with the provisions of this section to recommend a minimum wage for such industry.'

'Sec. 40-F. Wage boards; powers and duties; recommendations. A wage board shall be appointed by the commissioner without regard to any other provisions of law regarding the appointment and compensation of employees of the state. It shall include a number of disinterested persons representing the public, one of whom the commissioner shall designate as chairman, a like number of persons representing employees in the industry, and a like number representing employers in the industry. The representatives of the employers and employees shall be selected so far as practical from nominations submitted by employers and employees, or organizations thereof, in such industry. Two-thirds of the members of such wage board shall constitute a quorum and its recommendations shall require a vote of not less than a majority of all its members. The members of a wage board shall be entitled to compensation at the rate of not more than \$10 per day for each meeting attended by them, or each day actually spent in the work of the board. They shall also be paid their reasonable and necessary traveling and other expenses while engaged in the performance of their duties. The commissioner shall make rules and regulations not inconsistent with the provisions of sections 40-A to 40-P, inclusive, governing the selection of a wage board and its mode of procedure.

The commissioner shall present to a wage board all the evidence and information in his possession relating to the wages in the industry for which the wage board was appointed and all other information which the commissioner deems relevant to the establishment of a minimum wage for such industry and shall cause to be brought before the board any witnesses whom the commissioner deems material. A wage board may summon other witnesses or call upon the commissioner to furnish additional information to aid in its deliberations.

Within 60 days of its organization, a wage board shall submit to the commissioner its recommendations as to a minimum wage, which in no case shall be less than the rate prescribed by subsection I of section 40-C, to be paid by employers in the industry considered, which it determines to be as nearly adequate as is economically feasible to maintain the minimum standard of living necessary for the health, efficiency, and general well-being of workers. These recommendations may include terms and conditions relating to part-time employment, including the wage rates to be paid therefor and suitable treatment of other cases or classes of cases which, because of the nature and character of the employment, in the judgment of the board justify special treatment. In making such recommendations a wage board shall consider, among other relevant factors, the cost of living, the wages established in the state for work of like or comparable character by collec-

tive labor agreements negotiated between employers and employees by representatives of their own choosing, and the wages paid in the state for work of like or comparable character by employers who voluntarily maintain reasonable minimum wage standards. If the report of the wage board is not submitted within 60 days, the commissioner may appoint a new wage board.'

'Sec. 40-G. Wage orders. Within 30 days after the filing of the wage board's report, the commissioner, after due notice to interested persons and a public hearing thereon, shall by order approve and carry into effect the recommendations contained in such report, if he finds that the recommendations are made in accordance with law, are supported by the evidence adduced at the public hearing, and will carry out the purposes of sections 40-A to 40-P, inclusive; otherwise he shall disapprove such recommendations. If the commissioner disapproves such recommendations, he shall again refer the matter to the same wage board, or to another wage board for such industry, which he may appoint for such purpose, for further consideration and recommendations. Due notice of any hearing provided for in this section shall be given by publication in such newspapers and by such other means as the commissioner deems reasonably calculated to give general notice to interested persons.

Orders issued under the provisions of this section shall define the industry to which they shall apply and may include such administrative regulations as the commissioner finds necessary to carry out the purposes of sections 40-A to 40-P, inclusive, and of the orders. Except as provided in section 40-J, the rates established by any minimum wage order shall apply alike to all employees regardless of age or sex.

No such order shall take effect until 30 days after due notice is given of the issuance thereof by publication in such newspapers and by such other means as the commissioner deems reasonably calculated to give to interested persons general notice of such issuance. A certified copy of each such order shall be filed in the office of the secretary of state.'

'Sec. 40-H. Court review. Within 10 days after the decision of the commissioner has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the superior court of Kennebec county against the commissioner for the review of its decision, in which action any other party to the proceedings before the commissioner shall be made a defendant. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon the commissioner or upon such person as the

commissioner may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the commissioner shall forthwith mail one such copy to each such defendant. With its answer, the commissioner shall certify and file with said court the original or certified copies of all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. The commissioner may also, in his discretion, certify to such court questions of law involved in any decision by it. In any judicial proceeding under the provisions of this section, the findings of the commissioner as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. Such actions, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workmen's compensation law of this state. An appeal may be taken from the decision of the superior court of Kennebec county to the supreme judicial court, in the same manner, but not inconsistent with the provisions of sections 40-A to 40-P, inclusive, as is provided in civil cases. It shall not be necessary in any judicial proceeding under the provisions of this section, to enter exceptions to the rulings of the commissioner and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the commissioner shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas or stay unless the commissioner shall so order.'

'Sec. 40-I. Investigations; inspections; records. The commissioner is authorized, and it shall be his duty, to enforce the provisions of sections 40-A to 40-P, inclusive, and any orders issued thereunder. For administrative purposes, there is hereby created within the department of labor a wage and hour division. Said division shall be under the charge of a director. The commissioner shall have the authority to appoint the director of the wage and hour division and such assistants and other employees as may be necessary for the proper enforcement of the provisions of sections 40-A to 40-P, inclusive, and to fix their compensation, subject to existing laws applicable to the appointment and compensation of employees of the state.

The director or his authorized representative may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in the state, and may enter and inspect such places and such records, and make such transcriptions thereof, question such employees,

and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of sections 40-A to 40-P, inclusive, or which may aid in the enforcement of the provisions of said sections, or in connection with the recommendation of further legislation.

Every employer shall keep in or about the premises wherein any employee is employed a record of the name, address, and occupation of each such employee, of the amount paid each pay period to each such employee, of the hours worked each day and each work week by each such employee, and of such other information and for such periods of time as the director may by regulation or order prescribe. The director or his authorized representative shall for the purpose of examination have access to and the right to copy from such records, and every employer shall furnish to the director or his authorized representative on demand a sworn statement of such records, and, if the director shall so require, upon forms prescribed or approved by him. Every employer shall furnish to the director or his authorized representative such information relating to the employment of workers and in such manner as the director may require. Every employer shall keep a printed abstract of the law and a copy of any minimum wage order to which he may be subject conspicuously posted in or about the premises wherein any person subject thereto is employed. Employers shall be furnished copies of such abstract and orders on request without charge. The provisions of this paragraph shall not apply to domestic service in private homes, but the director may by regulations provide for the keeping of necessary records for such employment.

Any employer who hinders or delays the director or his authorized representative in the performance of his duties in the enforcement of the provisions of sections 40-A to 40-P, inclusive; or who refuses to admit the director or his authorized representative to any place of employment; or who fails to keep or falsifies any record required under the provisions of this section, or who refuses to make such records accessible or to furnish a sworn statement thereof or to give information required for the proper enforcement of said sections, upon demand, to the director or his authorized representative; or who fails to post an abstract of this law or a copy of a minimum wage order as required by this section shall be deemed to have violated the provisions of sections 40-A to 40-P, inclusive.'

'Sec. 40-J. Learners; apprentices; handicapped workers. The director may by regulations or by orders provide for the employment, under special certificates issued pursuant to regulations of the commissioner, of

I. Learners, at such wages lower than the applicable minimum wage

and subject to such limitations as time, number, proportions, and length of service as the commissioner shall prescribe, of

II. Apprentices, at such wages lower than the applicable minimum wage as are approved by the state apprenticeship council, and of

III. Individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, at such wages lower than the applicable minimum wage and for such period as shall be fixed in such certificates.'

'Sec. 40-K. Oaths; affidavits; subpoenas. The director or his authorized representative, or a wage board, shall have the power to administer oaths, to take or cause to be taken the depositions of witnesses, and to require by subpoena the attendance and testimony of witnesses and the production of all books, records, and other evidence relative to any matter under investigation. Such subpoenas shall be signed and issued by the director or his authorized representative, or by the chairman of the wage board, as the case may be. In cases of failure of any person to comply with any subpoena lawfully issued under the provisions of this section or on the refusal of any witness to produce evidence or to testify to any matter regarding which he may be lawfully interrogated, any justice of the superior court upon application of the director or his authorized representative, or the chairman of the wage board, shall compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued by such court or a refusal to testify therein. The director shall have the power to certify to official acts.

No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, contracts, agreements, or other records and documents before the director or his authorized representative or a wage board, or in obedience to the subpoena of the director or his authorized representative or a wage board or in any cause or proceeding instituted under the provisions of sections 40-A to 40-P, inclusive, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.'

'Sec. 40-L. Regulations and orders. The commissioner shall have the power to issue such regulations and orders as are necessary or appropriate

to carry out the provisions of sections 40-A to 40-P, inclusive. Such regulations or orders, without being limited thereto, may include such terms and conditions, including the restriction or prohibition of industrial homework or of such other acts or practices, as the commissioner finds necessary or appropriate to carry out the purposes of said sections, or of a wage order issued thereunder, and to prevent the circumvention or evasion thereof and to safeguard the standards therein established; and shall include such partial or total restrictions or prohibitions on the employment (notwithstanding the payment of time and one-half the regular rate of pay) of employees in excess of the hours specified in the 1st paragraph of section 40-D as he finds necessary to prevent the circumvention of the intent of the said 1st paragraph of section 40-D to reduce hours of labor by the reduction in wage rates to avoid the penalizing effect of the overtime compensation provisions, or by other devices; and may permit reasonable deductions from the minimum wage applicable under the provisions of sections 40-A to 40-P, inclusive, or a wage order issued pursuant thereto for board, lodging or other similar services furnished by an employer to his employees.

Regulations or orders of the director issued pursuant to the provisions of the preceding paragraph which relate to industrial homework or to employment in excess of the hours specified in the 1st paragraph of section 40-D shall be made only after notice to interested persons and a public hearing by the director at which such persons may be heard.

Regulations or orders issued pursuant to the provisions of this section shall take effect upon publication in such newspapers and by such other means as the director deems reasonably calculated to give to interested persons general notice of such issuance.'

'Sec. 40-M. Cooperation with federal agency. The department of labor and industry may and it is hereby authorized to assist and cooperate with the Wage and Hour Division, United States Department of Labor, in the enforcement within this state of the Fair Labor Standards Act of 1938, and, subject to the regulations of the administrator of the wage and hour division and the laws of the state applicable to the receipt and expenditure of moneys, may be reimbursed by said division for the reasonable cost of such assistance and cooperation.'

'Sec. 40-N. Penalty provisions; collection of unpaid wages. Any employer who violates any provision of sections 40-A to 40-P, inclusive, or of a wage order issued pursuant to the provisions of section 40-G, or of any regulation or order of the director issued under the authority of sections 40-A to 40-P, inclusive, or who discharges or in any other manner

discriminates against any employee because such employee has made any complaint to his employer, the director or any other person, or instituted or caused to be instituted any proceeding under or related to said sections, or has testified or is about to testify in any such proceedings, or has served or is about to serve on a wage board, shall, upon conviction thereof, be punished by a fine of not less than \$25, nor more than \$500, or by imprisonment for not less than 10 days, nor more than 90 days, or by both such fine and imprisonment. Each day a violation shall continue shall constitute a separate offense.

Failure of an employer to pay an employee the minimum wage or overtime compensation, if any, required by sections 40-C and 40-D, respectively, in full, within 5 days after the end of the customary pay period during which the wages were earned, shall constitute prima facie evidence of a violation of such sections.

Any employer who violates any provision of sections 40-C or 40-D shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or unpaid overtime compensation, as the case may be, and an additional equal amount of liquidated damages.

Action to recover such liability may be maintained in the superior court by one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. At the request of any person paid less than the amount to which he is entitled under the provisions of sections 40-A to 40-P, inclusive, the director may take an assignment in trust for the assigning employee of the full amount to which he is entitled under the provisions of this paragraph and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court. The director shall not be required to pay the filing fee, or other costs, in connection with such action. The director in case of suit shall have power to join various claimants against the same employer in one cause of action.

Whenever it shall appear to the director that any employer is engaged in any act or practice which constitutes or will constitute a violation of any provision of sections 40-A to 40-P, inclusive, or of any provision of any regulation or wage order issued thereunder, he may in his discretion bring

an action in the superior court to enjoin such act or practice and to enforce compliance with the provisions of said sections or with such regulation or wage order, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond.'

'Sec. 40-O. Relation to other laws. Where any other state law or any federal law or any municipal ordinance, or any order or regulation issued thereunder, establishes a minimum wage higher than the minimum wage established under the provisions of sections 40-A to 40-P, inclusive, or maximum hours lower than the maximum hours established under the provisions of said sections, such law, ordinance, order, or regulation shall continue in full force and effect together with the provisions of said sections. No provision of sections 40-A to 40-P, inclusive, shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under the provisions of said sections, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under said sections.'

'Sec. 40-P. Right of collective bargaining protected. Nothing in sections 40-A to 40-P, inclusive, shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively through representatives of their own choosing in order to establish wages in excess of the applicable minima under the provisions of said sections, or to establish hours of work shorter than the applicable maxima under the provisions of said sections.'