In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-878

THE NATIONAL LEAGUE OF CITIES, ET AL., APPELLANTS

v.

W. J. USERY, JR., SECRETARY OF LABOR

No. 74-879

THE STATE OF CALIFORNIA, APPELLANT

v.

W. J. USERY, JR., SECRETARY OF LABOR

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

APPELLEE'S RESPONSE TO APPELLANTS' SUPPLEMENTAL BRIEF ON REARGUMENT

This short factual statement is submitted in response to the supplemental brief filed by appellants on February 24 in No. 74-878, and to two amicus briefs filed after the submission of our supplemental brief.[1] We do not intend to burden the Court with additional argument. But appellants' new "cost" estimates are based on so many misconceptions of the Act's requirements, and their brief so misconstrues the Labor Department's procedures and the impact data relied upon by Congress, that some response is necessary to correct, with more specificity than would be permitted by oral argument, the more significant errors.

In dealing with the considerable number of misunderstandings and errors underlying the factual assertions in question, it is inevitable that an impression of difficulty and complexity should appear, at first blush, in the application of the Act to public bodies. But such confusion as exists lies not in the Act or the regulations, but in the failure of appellants and many of their members to examine closely the limited provisions of the Act of special concern to them, and to take advantage of the direct channels of explication available to them along with all other employers.

Thus, while the National Association of Counties' brief, at page 16, complains of the 50 provisions of the Act defining exemptions from its requirements (see also The Municipal Law Officers' brief, p. 38), in fact only 6 have any substantial pertinence: Sec-

[1] These amicus briefs were filed on behalf of the National Institute of Municipal Law Officers, and the National Association of Counties.

tion 7(b) relating to overtime pursuant to a collective bargaining agreement; Section 7(j) relaxing the overtime requirement for hospitals; Section 7(k) relaxing the overtime requirement for law enforcement and fire protection activities; Section 13(a)(1) excluding white collar workers; Section 13(a)(3) exempting recreational establishments; and Section 13(b)(7) providing an overtime exemption for local transportation systems. Of these, only Section 7(k) has particular pertinence to public bodies, the rest being broadly applicable to employers generally and having a long history of settled judicial construction.

In view of the Act's relative simplicity, it is by no means clear that a majority of National League's 15,000 members share the misconceptions reflected in the excerpts from the letters quoted in appellants' supplemental brief. Moreover, these letters—which were solicited by National League from among its members (suppl. br., p. 7)—were, in general, written by personnel officers with no prior experience in dealing with the Act. Had the newly covered public bodies availed themselves of the normal channels of information long used by private employers, the misunderstandings would in great part have been avoided.[2]

1. *Appellants' new "cost" estimates.* Appellants' revised cost estimates, like their earlier versions, are

[2] According to the Labor Department's enforcement office for the Wage and Hour Division, its employees spent 21 percent of their budgeted time in fiscal 1975 on informational and explanatory assistance.

not substantiated by any explanatory information or underlying cost data. Indeed, the brief does not even reproduce the letters from which the conclusory cost statements were taken.[3] Where appellants' brief does contain such data, substantiating or explaining the cost estimates, it is apparent as shown in our original brief, that their cost estimates are largely based on a misconception of the Act's requirements.[4]

[3] In the one case where the letter was reprinted (see suppl. brief's appendix, 1a), appellants' summary of that letter was inaccurate. Thus, the brief states that the International City Management Association has determined "that the cost of the Labor Act Amendments here challenged, to Cities over 10,000 population alone, will be over one billion dollars ($1,000,000,000.00) *per year*" (suppl. br., p. 6). According to the actual letter, however, this cost estimate was "for *all* cities" (emphasis added), including those with populations under 10,000 (suppl. br., appendix 1a).

[4] These same errors and misconceptions permeated appellants' original brief. For example, their earlier $200 million estimate for fire departments overlooked the qualifying statement in the letter from which the information was taken that only $30.4 million (or 15%) of the total estimate reflected additional compensation due under the Act for hours worked in excess of 60 per week. (Under Section 7(k) of the Act, fire departments were relieved of any overtime obligation until the employees' weekly hours, averaged over a 28-day period, exceeded 60—58 after January 1, 1976.) Eighty-three percent of the $200 million dollar estimate ($165.8 million) was based on the assumption that numerous local governments, despite the Section 7(k) partial overtime exemption, would pay overtime after 40 hours. See our original brief, pp. 49-50, and our motion to affirm, pp. 22-23, n. 19. Other similar mistakes are corrected in our original brief, pp. 47-53, and in our supplemental brief, p. 7, n. 2.

Appellants' largest cost estimates are for fire protection and law enforcement personnel. These estimates, as appears even on appellants' incomplete data, are based on incorrect assumptions concerning the Act's application. For example, the City of Milwaukee (appellants' suppl. br., p. 20, n. 15) reports that in the first two quarters of 1975 its employees worked 30,000 overtime hours, for which they were paid "comp-time." Of these overtime hours, 20,000 were worked by the police department and the City assumes that, if the Act had been in effect, it would have had to pay for these hours in cash at an additional cost to the City of $200,000. In fact, however, unlike Milwaukee's own practice which is to pay overtime (or comp-time) after 40 hours (*Police Departments in the United States*, Fraternal Order of Police, National Lodge, A Survey of 1975 Salaries and Working Conditions (24th Ed., 1975), p. 1), the Fair Labor Standards Act does not require overtime rates for police until their hours, when averaged over a 28-day period, exceed 60 a week (or 58 after January 1, 1976). The hours worked between 40 and 60 (or now 58), as specifically stated in the Secretary's Regulations (29 CFR 553.19, 39 F.R. 44147 (December 20, 1974)), and in our original brief (pp. 52-53), can lawfully be paid for in comp-time. This same rule would, of course, apply to overtime hours worked by fire protection personnel, who undoubtedly account for a large part of Milwaukee's remaining 10,000 overtime hours.

Presumably, these same facts would dramatically reduce, if not eliminate, the $8.65 million first year cost estimate by Los Angeles (appellants' suppl. br., pp. 9-10), since Los Angeles likewise provides comp-time or other overtime compensation for all weekly hours over 40 (*ibid.*; see also our original br., pp. 52-53). And Des Moines' estimate of $70,000 over-time costs for its police and fire budgets (appellants' suppl. br., p. 12, n. 5) would also be reduced if, as seems likely, its count of overtime hours referred to hours over 48 per week—since the City pays over-time or comp-time after 48 hours per week (*Police Departments in the United States*, *supra*, p. 2; *Personnel, Compensation, and Expenditures in Police, Fire, and Refuse Collection and Disposal Departments*, Urban Data Service, A Report (1975), p. 6, Table 8).

It is extremely doubtful that many of the cost estimates supplied to appellants were based on work-weeks in excess of 60 hours. According to the 1975 Urban Data Service Report, *supra*, most police departments have a standard workweek of 40 hours or less (p. 2, Table 2). Moreover, a survey of 1,031 fire departments showed a mean regular workweek of 53 hours. See 1975 Urban Data Service Report, p. 6, Table 8. The average for cities the size of Des Moines (100,000-249,999) was 54 hours (*ibid.*).

Even after the narrowing of the Section 7(k) exemption on January 1, 1977 (which will require overtime after 54 hours), the actual increase in over-time costs will be relatively small for fire protection personnel. The 40% increase referred to by Carmel, Indiana, was apparently based on the erroneous assumption that fire fighters would have to be paid overtime after 40 hours. Under Carmel's current system, during each 28-day period, the city employs three crews of eight firefighters each. Two of the crews work 216 hours during this period, while one crew works 240 hours. This results in a total of 5,376 hours worked by the three crews of employees during the 28-day period.[5] If these employees were each permitted to work only 40 hours per week, or 160 hours in the 28-day period, the total hours worked by the city's 24 firefighters during each 28-day period would be reduced to 3,840 hours, which is 1,536 hours less than they presently work.[6] To make up these hours, Carmel would have to employ an additional 9.6 employees, which is the basis of the 40 percent increase in manpower which they have asserted to be necessary (suppl. br., p. 11, n. 4).[7]

In reaching this asserted result, however, Carmel overlooks the fact that the same 24 employees now employed could continue to work their presently scheduled shifts, except that one crew of eight employees would work 8 overtime hours each 28-day period (the difference between the 240 hours they would work and the 232 hours maximum provided by Section 7(k)). This would result in a total of

[5] 16 employees x 216 hours plus 8 employees x 240 hours = 5,376 hours.

[6] 24 employees x 160 hours = 3,840 hours.

[7] 1,536 hours divided by 160 hours = 9.6 employees; 24 employees x .40 = 9.6 employees.

64 overtime hours (8 employees on the crew, each working eight overtime hours). These 64 hours for which the overtime premium must be paid are only 1.19 percent of the 5,376 hours worked by Carmel's firefighters during the 28-day period. Since these employees are already being paid at their regular rate for all hours worked, the only additional cost to the city would be the 50 percent overtime premium, or 0.6 percent of the pay for the total hours worked (one-half of 1.19 percent), a substantially lower figure than the 40 percent asserted by Carmel. Since the total hours worked during 1976 is expected to cost $316,442, payment of the overtime premium for this year will cost the city $1,898.65 (.006 x $316,442).

After January 1, 1977, when the maximum-hours standard for firefighters is reduced to 216 hours in a 28-day period, one of Carmel's eight-employee crews would work 24 overtime hours during each 28-day period, while the other two crews would continue to work no overtime hours. The total additional annual cost of paying for these overtime hours during 1977 would be $5,695.96, representing a 1.8% increase in cost, still substantially lower than the asserted 40 percent.[8]

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[8] The total overtime hours worked by the crew will be 192 (8 x 24). This number of overtime hours is 3.6 percent of all hours presently worked (192 divided by 5,376). Since the overtime premium is 50 percent, the percentage increase in cost would be only half that amount, or 1.8 percent (3.6 percent divided by 2). Based on the City's figure of $316,442.00, this would increase their cost by $5,695.96.

The same percentage increases would occur at Los Altos (suppl. br., p. 14, n. 6) where the employees worked the same schedule. The increased costs there (assuming that the City's underlying computations are based on an accurate count of nonexempt employees), would be $11,533 in 1976 and $34,600 in 1977. Based on the Los Altos population of 40,000, this additional overtime cost amounts to 28 cents per person in 1976 or 84 cents per person in 1977. Los Altos also estimates that compliance with the Act for its student firefighters will cost an additional $16,200 (suppl. br., p. 31, n. 29). This estimate apparently overlooks the fact that Section 3(m) of the Act allows a credit for the cost of providing room (and, where applicable, board) to the student firefighters, who live at the station while attending school.

2. *Factual errors concerning the Act's requirements.* Most of the cities reporting program reductions and cost increases if the Act were applied did so on the basis of misinformation concerning the Act's requirements. For example, Oshkosh, Wisconsin, reports that its "greatest problem" is the Act's requirement that it pay all park, golf course and bridge tending employees overtime after 40 hours, instead of allowing them to accumulate comp-time to be used in the colder months when activity in these departments declines (suppl. br., p. 23, n. 19). In fact, from the limited information given in appellants' brief, it would appear that Oshkosh could continue this same practice under Section 7(b) of the

Act, which would not require any overtime until the employee had actually worked more than 2080 hours in the year or until the employee's hours in any one workweek exceeded 56, in which event overtime would only be paid for those hours over 56. Moreover, it is highly likely that the park and golf employees are completely exempt from the Act's overtime and minimum wage requirements as a result of Section 13(a)(3) which applies to any recreational establishment whose activities are seasonal.

Equally erroneous is appellants' suggestion that cities have to pay overtime for 24 hours, 7 days a week, when snow removal crews are on stand-by (suppl. br., p. 24). "Stand-by" time is only compensable if the employee's freedom is so circumscribed that he or she cannot use the time for personal pursuits. Thus, no compensation need be paid if the employee is only required to leave a number where he can be reached, or is free to use the time at home in the same way he would normally use such time—as, for example, to sleep at night. See 29 CFR 553.14(a); 29 CFR 785.14-785.23.

The complaints expressed by Englewood, California (suppl. br., p. 24, n. 22) are also groundless. Englewood states that the Act required it to hire a full-time bookmobile driver where before firefighters took turns on their day off. If the firefighters were volunteering as an exercise of civic duty (*e.g.*, driving a bookmobile to hospitals or nursing homes), they could have continued to do so without subjecting the city to obligations under the Act. See 29 CFR 553.11(d).

If however, the firefighters were being paid for the bookmobile work, it presumably would not cost the city any more to replace them with one full-time driver. The other complaint made by Englewood is equally unfounded. Library employees who arrive at work early and who, while waiting for business hours to start, pick up the telephone to answer sporadic or occasional calls, are not entitled under the Act to any extra compensation. See *Nunn's Battery & Electric Co.* v. *Wirtz*, 335 F.2d 599, 601 (C.A. 5).

Similarly, contrary to the suggestion in appellants' supplemental brief (suppl. br., pp. 27-28), the Act does not require public employees to terminate their participation in a city's recreation program as volunteer coaches or athletic directors or to terminate their membership in a volunteer fire department. Thus, the Secretary's Regulations specifically state that "[v]olunteers engaged in fire protection or law enforcement activities may include individuals who are employed in some other capacity by the same public agency. For example, * * * an employee of a village Department of Parks and Recreation may serve as a volunteer firefighter in his or her local community" (29 CFR 553.11(c)).[9]

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[9] In White Bear Lake, Minnesota, where the "volunteer" firemen are paid $4.00 an hour for time spent on fire calls, it would appear (in the absence of more information) that they are "employees" and not volunteers. The Secretary's Regulations recognize that volunteers will almost always receive some pay (either to qualify them for workers compensation or to reimburse them for out-of-pocket expenses), and "[p]ayments which average $2.50 per call will be considered

Nor do interns and students working in various branches of State and local government have to be paid in accordance with the Act's requirements (suppl. br., p. 31, n. 28) if they are not working in contemplation of pay, and are not replacing regular employees, but are performing the work under close supervision as part of their education or learning. See *Walling* v. *Portland Terminal Co.*, 330 U.S. 148.

Other cities have expressed the mistaken belief that the Act requires compensation at overtime rates for training which the employee takes on a voluntary basis (suppl. br., p. 26, n. 23, Brewer, Maine, and Vacaville, California). The Regulations specifically state that "training * * * which is not required but which may incidentally improve the employee's performance of his or her regular tasks or prepare the employee for future advancement, need not be counted as working time even though the public agency may pay for all or part of such training" (29 C.F.R. 553.7). Moreover, even where the training is required, the only hours which must be paid for are the actual course or training hours, and not the time spent in studying or in other personal pursuits (Regulations, 29 CFR 553.7).

Englewood, Colorado, erroneously states that the Act's prohibitions against age discrimination would require it to hire a 64-year-old into its police cadet

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nominal" and will not affect the individual's volunteer status. 29 CFR 553.11. Larger payments could also be made but they would have to be justified in accordance with standards stated in the Regulations.

program. This simply is not so. While the city could not restrict its program, as it currently does, to individuals between the ages of 18 and 21 (as it has been advised), it certainly could justify refusing to hire a 64-year-old based on the costs and time involved in training in relation to the necessarily short service potential. The Act specifically recognizes an exception for "reasonable factors other than age" and for "a bona fide occupational qualification reasonably necessary to the normal operation of the particular business" (29 U.S.C. 623(f)).

Charlotte, North Carolina, is also incorrect in stating that its overtime obligation for its sanitation employees will be computed by dividing their weekly salary by 35 (*i.e.*, the average number of hours they actually work) and applying the statutory time-and-a-half factor to that amount. If the facts are as stated in appellants' brief, and the employees understand that their salary is for all hours up to 40, then their regular rate for overtime purposes is computed by dividing their salary by 40, and not by the average number of weekly hours worked. See 29 CFR 778.113a.

Appellants also contend that the Secretary's recent amendments to the Regulations defining executive, administrative and professional employees (who are exempt from the Act's minimum wage and overtime requirements by virtue of Section 13(a)(1)) "result[ed] * * * [in] broader coverage under the Act * * * [and] in additional overtime expenses for heretofore partially exempt personnel" (suppl. br., pp. 49-50). The only change made in the regulations was to revise the salary tests from $125 a week for executive and administrative employees and $140 a week for professional employees, which tests were established in May 1973, to $155 a week for executive and administrative employees and $170 a week for professional employees (29 CFR 541.1, 541.2 and 541.3; 40 F.R. 7092 (February 19, 1975)). These salaries would yield a yearly income of $8060 and $8840. Since the national median income for all full-time workers in 1974 was $10,066 (and $11,-840 for men),[10] it would not seem that these increased salary tests of $8060 and $8840 would exclude from the Section 13(a)(1) exemption any employee who could otherwise qualify as an "executive," "administrative," or "professional" employee.

Appellants' brief is mistaken in suggesting that working patients under the Act must be paid the same as regular employees and that they must also be paid for work therapy. It is clear from the Regulations that patients do not have to be paid for performing personal housekeeping chores or for making craft products, which they do voluntarily as part of their therapy. They do have to be paid for work which has a consequential economic benefit to the institution. See Regulations, 29 CFR 529.2(d). This pay, however, can be less than the pay of regular employees and, indeed, less than the minimum wage,

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[10] U.S. Department of Commerce, Bureau of the Census, *Money Income and Poverty Status of Families and Persons in the United States: 1974*, pp. 1-2, 14, Table 10.

if a handicapped certificate is obtained. Depending on the degree of the handicap, the wage can be less than 25 percent of the minimum. *Ibid.*

The assertion that the Labor Department has assigned more than 1,000 investigators to enforce the Act's requirements in mental institutions is incorrect (suppl. br., p. 35). The Department's total number of investigators is 1,135, and they audit compliance with 8 major laws (including the Fair Labor Standards Act, Age Discrimination in Employment Act, Davis-Bacon Act, Walsh-Healey Public Contracts Act, Contract Work Hours Standards Act, Service Contract Act, Farm Crew Leader Registration Act, and the garnishment provisions of the Consumer Credit Protection Act) as well as provisions in 70 other statutes, including the Water Pollution Control Act. Obviously, only a small percentage of the 70,000 investigations conducted each year will be at public hospitals and institutions. Thus, during the period from February 1, 1975, through July 21, 1975, the Department investigated working patients at only 72 hospitals and mental institutions (40 of which were public). Moreover, the Act's coverage of patients working in public hospitals and institutions does not result from the 1974 Amendments here challenged, but from the 1966 Amendments upheld in *Maryland* v. *Wirtz*, 392 U.S. 183.

In a somewhat similar vein, the Metropolitan Government of Nashville states that it will be required to spend "thousands of man hours * * * working with the inspectors and investigators of the Wage

& Hour Division" (suppl. br., p. 4). We are advised by the Division's enforcement office that the average time spent on an FLSA investigation is 16 hours and not the thousands anticipated by Nashville. Moreover, even if the investigation is a major one involving more than 16 hours, most of the time is spent reviewing payroll data and other routine employment records, and there is thus little disturbance to the employer's work force.

Finally, appellants are simply incorrect in their repeated assertion that the Act will subject public employers to class actions and triple damages (suppl. br., pp. 34, 51; see also Municipal Law Officers' br., pp. 7, 51). Section 16(b) originally provided that "any one or more employees * * * may designate an agent or representative to maintain [an] action for and in behalf of all employees similarly situated" (52 Stat. 1060, at 1069). However, Section 5 of the Portal-to-Portal Act of 1947, for the stated purpose of "bann[ing] * * * representative actions" (61 Stat. 84, 87), deleted this clause and substituted a new sentence stating that "[n]o employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed with the court" (29 U.S.C. 216(b)). Thus, the use of class actions in suits brought under the FLSA (and under the Age Discrimination in Employment Act which incorporates Section 16(b) (29 U.S.C. 626(b)) is specifically precluded. See *LaChapelle* v. *Owens-Illinois, Inc.*, 513 F.2d 286 (C.A. 5); *Clougherty* v. *James Vernon Co.*, 187 F.

2d 288, 290 (C.A. 6), certiorari denied, 342 U.S. 814.[11]

There is also no basis for the assertion that employers are subject to triple damages under the Act. Sections 16(b) and 16(c) of the FLSA authorize liquidated damages up to an amount equal to the amount of unpaid minimum wages or overtime compensation.[12] This additional amount, however, may not be awarded if the court finds that the employer had acted in "good faith" and had "reasonable grounds" for believing that he was not violating the Act's requirements (Section 11 of the Portal-to-Portal Act, 29 U.S.C. 260). See also Section 7(b) of the ADEA which requires a finding that the violations were "willful" (29 U.S.C. 626(b)).

Appellants' other concern that public officials will be subject to the Act's criminal sanctions is also unfounded. In fiscal 1974, only 1 of the 1,758 FLSA suits filed by the Secretary sought criminal sanctions. The Act specifically provides that no criminal sanctions can be applied unless the violations were

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[11] *Souder* v. *Brennan,* 367 F.Supp. 808 (D. D.C.), cited by appellants as an example of an FLSA class suit (suppl. br., p. 34), was not a suit brought against an employer to recover back wages, but a suit brought against the Secretary to compel him to enforce the Act with respect to working patients.

[12] The Act's liquidated damage provision is intended to compensate employees "for the retention of [their] * * * pay which might result in damages too obscure and difficult of proof for estimate other than by liquidated damages" (*Overnight Motor Co.* v. *Missel,* 316 U.S. 572; *Brooklyn Bank* v. *O'Neil,* 324 U.S. 697, 707).

"willful" (Section 16(a), 29 U.S.C. 216(a)) and the maximum penalty for a first conviction is "a fine of not more than $10,000" (*ibid.*). Imprisonment can only be imposed for a second criminal conviction and then only up to six months. We think it can be assumed that no public official will violate the Act's requirements with the criminal intent necessary to sustain even a first conviction.

3. *Data supporting Congress' cost estimates.* Appellants express "candid doubt" that 95,000 state and local government employees were paid less than the minimum wage established by the 1974 Amendments (suppl. br., pp. 54, 57; National Association of Counties' br., pp. 3, 5). They also claim that Congress' estimate of the cost impact of the Act's overtime provision was based on a survey of "scheduled workweeks" and not on a survey of actual hours worked (suppl. br., p. 5).

These assertions are groundless. The challenged estimates were based on a nationwide survey of state and local governments (excluding schools and hospitals) conducted by the Government Division of the U.S. Bureau of Census, which obtained data on the actual wages paid and the actual hours worked for a payroll period in March 1970.[13] These data were supplied by the employers themselves. The table prepared from the data shows the number of employees at each five-cent interval starting at "under $1.00"

[13] *Nonsupervisory Employees in State and Local Governments,* U.S. Department of Labor, Workplace Standards Administration, 1971 Report to Congress, pp. 7, A-1, A-4.

and going to "under $2.50." (The minimum wage applicable to the private sector at the time of the survey was $1.60.) As appears from the table (reprinted *infra*, p. 21) almost 250,000 state and local government employees were paid less than $1.90 in March 1970. Other tables were prepared showing the numerical distribution of employees by weekly hours worked.[14]

The survey information on wages and hours was brought up to date for Congress in 1973. See *Background Material on the Fair Labor Standards Act Amendments of 1973*, 93d Cong., 1st Sess., pp. 220, 222, n. 1. For example, during the period from 1970 to 1973, the hourly earnings of state and local government employees increased by 23 percent.[15] Assuming that the wages of the lowest paid employees increased proportionately, those who had previously earned under $1.55 would predictably still be earning under $1.90. Their number was also increased to reflect the intervening increase in public employment. Based on similar computations, the Secretary, in his most recent report to Congress, estimates that 90,000 state and local government employees (excluding schools and hospitals) are paid less than the presently applic-

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[14] *Id.*, A-21.

[15] *Public Employment,* U.S. Department of Commerce, Bureau of the Census (1970 and 1973).

able minimum wage of $2.20.[16] See Table, *infra*, p. 22.

Respectfully submitted.

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[16] *Minimum Wage and Maximum Hours Standards Under the Fair Labor Standards Act,* U.S. Department of Labor, Employment Standards Administration, An Economic Effects Study Submitted to Congress, 1976, p. 9.

STATE AND LOCAL GOVERNMENTS (EXCLUDING EDUCATION AND HOSPITAL INSTITUTIONS)

Table 2. Cumulative Numerical Distribution of Nonsupervisory Employees, by Average Straight-Time Hourly Earnings and Sex, United States and Regions: March 1970

Item	United States			Northeast			South			North Central			West		
	Nonsupervisory employees														
	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female
Average hourly earnings:															
Under $1.00	10,863	6,546	4,317	4,339	2,449	1,890	2,859	1,550	1,309	3,073	2,182	891	592	365	227
Under $1.05	15,745	9,159	6,587	5,017	2,650	2,368	5,002	3,000	2,002	4,919	3,053	1,866	807	457	350
Under $1.10	17,651	10,033	7,618	5,739	2,868	2,871	5,616	3,367	2,250	5,304	3,265	2,039	992	534	458
Under $1.15	20,694	11,736	8,958	6,318	3,033	3,285	6,974	4,245	2,728	6,208	3,794	2,414	1,195	665	530
Under $1.20	23,065	13,095	9,970	6,958	3,382	3,575	7,781	4,755	3,026	6,977	4,220	2,757	1,349	738	611
Under $1.25	26,403	14,727	11,676	8,155	3,724	4,431	9,322	5,787	3,535	7,456	4,429	3,027	1,470	787	683
Under $1.30	35,020	20,159	14,861	9,075	4,132	4,943	13,382	8,747	4,635	10,335	6,062	4,274	2,227	1,217	1,010
Under $1.35	39,473	22,553	16,921	9,637	4,527	5,110	15,813	10,167	5,646	11,539	6,536	5,002	2,485	1,323	1,162
Under $1.40	44,193	25,394	18,798	10,313	4,864	5,449	17,876	11,751	6,125	13,065	7,282	5,783	2,939	1,499	[illegible]
Under $1.45	51,396	29,305	22,091	11,535	5,409	6,126	21,082	13,873	7,208	15,216	8,219	6,997	3,564	1,804	1,760
Under $1.50	61,582	34,995	26,586	12,531	5,860	6,671	24,301	16,298	8,002	20,228	10,526	9,702	4,521	2,310	2,211
Under $1.55	80,624	46,363	34,262	14,650	6,832	7,818	33,240	22,580	10,660	26,585	13,904	12,681	6,149	3,047	3,103
Under $1.60	91,714	52,485	39,230	15,718	7,372	8,346	39,585	26,632	12,953	29,180	14,938	14,242	7,232	3,543	3,689
Under $1.65	117,402	68,314	49,088	19,007	9,340	9,666	52,976	36,516	16,460	36,057	18,069	17,933	9,362	4,389	4,974
Under $1.70	134,012	78,755	55,256	20,453	10,050	10,403	63,168	43,989	19,179	39,366	19,473	19,893	11,025	5,244	5,781
Under $1.75	158,110	93,802	64,309	21,692	10,635	11,057	77,933	55,306	22,627	43,475	20,992	22,483	15,010	6,869	8,141
Under $1.80	191,902	113,306	78,596	26,806	13,222	13,584	96,527	67,603	28,924	50,507	24,170	26,337	18,061	8,311	9,751
Under $1.85	218,522	128,770	89,752	29,176	14,340	14,836	112,679	79,000	33,679	56,300	26,275	30,025	20,367	9,154	11,213
Under $1.90	248,932	146,212	102,725	31,957	15,780	16,178	130,500	91,359	39,141	62,405	28,827	33,577	24,076	10,247	13,829
Under $1.95	276,752	161,477	115,275	34,677	16,871	17,807	148,294	102,909	45,385	67,185	30,494	36,691	26,595	11,203	15,392
Under $2.00	305,464	177,772	127,692	37,787	18,761	19,027	166,036	114,291	51,745	72,339	32,511	39,827	[illegible]	12,209	17,093
Under $2.05	368,555	218,127	150,428	49,365	25,282	24,083	193,471	133,595	59,876	89,632	43,591	46,040	[illegible]	15,659	20,427
Under $2.10	398,887	234,709	164,178	52,605	26,957	25,648	210,580	144,580	66,001	96,334	46,318	50,016	39,368	16,354	22,514
Under $2.15	442,662	260,095	182,567	61,327	30,704	30,623	232,901	160,498	72,403	105,232	50,690	54,542	43,201	18,203	24,998
Under $2.20	476,812	278,638	198,173	67,078	33,583	33,495	250,349	171,615	78,734	111,735	53,240	58,496	47,649	20,200	27,449
Under $2.25	514,623	299,111	215,512	73,523	36,638	36,886	267,048	182,294	84,754	120,557	57,866	62,692	53,494	22,314	31,181
Under $2.30	562,507	328,039	234,468	81,013	40,583	40,430	290,812	199,115	91,698	130,473	63,356	67,122	60,203	24,985	35,218
Under $2.35	606,957	352,517	254,440	90,816	45,232	45,584	308,372	210,978	97,394	142,263	69,003	73,255	65,505	27,299	38,206
Under $2.40	648,072	375,155	272,916	98,079	48,786	49,293	325,474	222,391	103,083	150,804	73,849	76,355	73,715	30,129	43,586
Under $2.45	695,536	401,853	293,684	109,759	55,928	53,830	341,054	232,988	108,065	162,528	79,537	82,990	82,196	33,399	48,797
Under $2.50	732,490	422,186	310,304	116,428	59,022	57,406	357,192	243,621	113,571	170,148	83,265	86,884	88,721	36,278	52,443
Number of nonsupervisory employees	2,587,069	1,805,016	782,053	640,190	445,739	194,451	748,828	544,988	203,840	697,785	482,590	215,195	500,266	331,700	168,566
Total weekly payroll for nonsupervisory employees (thousands)	321,237	239,531	81,706	78,503	58,777	19,726	79,854	60,323	19,531	92,805	69,373	23,432	70,075	51,058	19,016
Average hourly earnings	$3.27	$3.43	$2.87	$3.41	$3.60	$2.95	$2.70	$2.75	$2.53	$3.52	$3.74	$3.01	$3.62	$3.91	$3.01

Table 1. Estimated number of nonsupervisory employees paid less than the minimum wage rates specified in the 1974 Amendments to the Fair Labor Standards Act and estimated cost of raising their wages to those rates on January 1, 1976 1/

Coverage status and scheduled minimum wage rate	Employees paid less than scheduled rate: Number (thousands)	Employees paid less than scheduled rate: Percent	Annual wage bill increase: Amount (millions)	Annual wage bill increase: Percent	Total number of employees (thousands)	Projected annual wage bill (millions)
Total, all nonsupervisory employees subject to the minimum wage	3,877	6.9	$1,201	0.2	56,121	$484,077
Employees subject to the minimum wage prior to 1966 Amendments to $2.30	1,199	3.4	431	.1	35,677	337,770
Employees subject to the minimum wage as a result of 1966 Amendments	1,574	11.8	529	.6	13,378	88,213
Federal government to $2.30	35	5.7	11	.2	615	6,567
State and local government to $2.20	331	10.5	92	.5	3,140	20,146
Other private nonfarm employees to $2.20	1,126	12.4	398	.7	9,051	58,287
Farmworkers to $2.00	82	14.3	28	.9	572	3,213
Employees newly covered by 1974 Amendments	1,104	15.6	241	.4	7,066	58,094
Federal government to $2.20	-	-	-	-	1,689	17,472
State and local government to $2.20	90	2.3	33	.1	3,835	36,636
Domestic service to $2.20	923	72.4	161	6.3	1,274	2,552
Other private nonfarm employees to $2.20	85	35.0	45	3.4	243	1,339
Farmworkers to $2.00 2/	6	25.5	2	2.1	25	95

1/ Estimates are based on employment in September 1975 and earnings levels projected to January 1, 1976, assuming an annual increase of 8 percent. Dollar amounts are annualized rates as of January 1, 1976 with no allowance for perquisites. For tipped employees, earnings include cash wages plus an allowance of 50 percent of the applicable minimum wage for tips. Estimates exclude changes proposed for employees in Puerto Rico and the Virgin Islands.

2/ Farmworkers added to coverage by revision of section 3 (e).

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