

United States Code Annotated
Title 29. Labor
Chapter 8. Fair Labor Standards (Refs & Annos)

29 U.S.C.A. § 216

§ 216. Penalties

Effective: May 21, 2008

[Currentness](#)

(a) Fines and imprisonment

Any person who willfully violates any of the provisions of [section 215](#) of this title shall upon conviction thereof be subject to a fine of not more than \$10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) Damages; right of action; attorney's fees and costs; termination of right of action

Any employer who violates the provisions of [section 206](#) or [section 207](#) of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer who violates the provisions of [section 215\(a\)\(3\)](#) of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of [section 215\(a\)\(3\)](#) of this title, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No 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 in the court in which such action is brought. 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. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under [section 217](#) of this title in which (1) restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under [section 206](#) or [section 207](#) of this title by an employer liable therefor under the provisions of this subsection or (2) legal or equitable relief is sought as a result of alleged violations of [section 215\(a\)\(3\)](#) of this title.

(c) Payment of wages and compensation; waiver of claims; actions by the Secretary; limitation of actions

The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under [section 206](#) or [section 207](#) of this title, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of unpaid minimum wages or overtime compensation and an equal amount as liquidated damages. The right provided by subsection (b) of this section to bring an action by or on behalf of any employee to recover the liability specified in the first sentence of such subsection and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary

in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under [sections 206](#) and [207](#) of this title or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b) of this section, unless such action is dismissed without prejudice on motion of the Secretary. Any sums thus recovered by the Secretary of Labor on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Secretary of Labor under this subsection for the purposes of the statutes of limitations provided in [section 255\(a\)](#) of this title, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action.

(d) Savings provisions

In any action or proceeding commenced prior to, on, or after August 8, 1956, no employer shall be subject to any liability or punishment under this chapter or the Portal-to-Portal Act of 1947 [[29 U.S.C.A. § 251 et seq.](#)] on account of his failure to comply with any provision or provisions of this chapter or such Act (1) with respect to work heretofore or hereafter performed in a workplace to which the exemption in [section 213\(f\)](#) of this title is applicable, (2) with respect to work performed in Guam, the Canal Zone or Wake Island before the effective date of this amendment of subsection (d), or (3) with respect to work performed in a possession named in [section 206\(a\)\(3\)](#) of this title at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.

(e)(1)(A) Any person who violates the provisions of [sections 212](#) or [213\(c\)](#) of this title, relating to child labor, or any regulation issued pursuant to such sections, shall be subject to a civil penalty not to exceed--

(i) \$11,000 for each employee who was the subject of such a violation; or

(ii) \$50,000 with regard to each such violation that causes the death or serious injury of any employee under the age of 18 years, which penalty may be doubled where the violation is a repeated or willful violation.

(B) For purposes of subparagraph (A), the term “serious injury” means--

(i) permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);

(ii) permanent loss or substantial impairment of the function of a bodily member, organ, or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or

(iii) permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.

(2) Any person who repeatedly or willfully violates [section 206](#) or [207](#), relating to wages, shall be subject to a civil penalty not to exceed \$1,100 for each such violation.

(3) In determining the amount of any penalty under this subsection, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of any penalty under this subsection, when finally determined, may be--

(A) deducted from any sums owing by the United States to the person charged;

(B) recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

(C) ordered by the court, in an action brought for a violation of [section 215\(a\)\(4\)](#) of this title or a repeated or willful violation of [section 215\(a\)\(2\)](#) of this title, to be paid to the Secretary.

(4) Any administrative determination by the Secretary of the amount of any penalty under this subsection shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with [section 554 of Title 5](#), and regulations to be promulgated by the Secretary.

(5) Except for civil penalties collected for violations of [section 212](#) of this title, sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provision of [section 9a](#) of this title. Civil penalties collected for violations of [section 212](#) of this title shall be deposited in the general fund of the Treasury.

CREDIT(S)

(June 25, 1938, c. 676, § 16, 52 Stat. 1069; May 14, 1947, c. 52, § 5(a), 61 Stat. 87; Oct. 26, 1949, c. 736, § 14, 63 Stat. 919; 1950 Reorg. Plan No. 6, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263; Aug. 8, 1956, c. 1035, § 4, 70 Stat. 1118; Aug. 30, 1957, Pub.L. 85-231, § 1(2), 71 Stat. 514; May 5, 1961, Pub.L. 87-30, § 12(a), 75 Stat. 74; Sept. 23, 1966, Pub.L. 89-601, Title VI, § 601(a), 80 Stat. 844; Apr. 8, 1974, [Pub.L. 93-259](#), §§ 6(d)(1), 25(c), 26, 88 Stat. 61, 72, 73; Nov. 1, 1977, [Pub.L. 95-151](#), § 10, 91 Stat. 1252; Nov. 17, 1989, [Pub.L. 101-157](#), § 9, 103 Stat. 945; Nov. 5, 1990, [Pub.L. 101-508](#), Title III, § 3103, 104 Stat. 1388-29; Aug. 6, 1996, [Pub.L. 104-174](#), § 2, 110 Stat. 1554; May 21, 2008, [Pub.L. 110-233](#), Title III, § 302(a), 122 Stat. 920.)

VALIDITY OF SUBSEC. (B)

<The United States Supreme Court, in [Alden v. Maine](#), 119 S.Ct. 2240, 144 L.Ed.2d 636, June 23, 1999, found that the powers delegated to Congress under Article I of the Constitution did not include the power to subject nonconsenting states to private suits for damages in state courts, as authorized by subsec. (b) of this section.>

<The United States Supreme Court has held that the ADEA did not validly abrogate states' Eleventh Amendment immunity from suit by private individuals; although ADEA contained clear statement of Congress' intent to abrogate states' immunity, the abrogation exceeded Congress' authority under enforcement clause of Fourteenth Amendment. [Kimel v. Florida Bd. of Regents](#), U.S.Fla.2000, 120 S.Ct. 631, 528 U.S. 62, 145 L.Ed.2d 522. >

[Notes of Decisions \(5232\)](#)

29 U.S.C.A. § 216, 29 USCA § 216

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