

Contract Work Hours and Safety Standards Act, as Amended



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

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TITLE I — CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

SEC. 101. As used herein, the term "Secretary" means the Secretary of Labor, United States Department of Labor.

SEC. 102². (a) Notwithstanding any other provision of law, the wages of every laborer and mechanic employed by any contractor or subcontractor in his performance of work on any contract of the character specified in section 103 shall be computed on the basis of a standard workweek of forty hours, and work in excess of such standard workweek shall be permitted subject to provisions of this section. For each workweek in which any such laborer or mechanic is so employed such wages shall include compensation, at a rate not less than one and one-half times the basic rate of pay, for all hours worked in excess of forty hours in the workweek.

(b) The following provisions shall be a condition of every contract of the character specified in section 103 and of any obligation of the United States, any territory, or the District of Columbia in connection therewith:

(1) No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic, in any workweek in which he is employed on such work, to work in excess of forty hours in such workweek except in accordance with the provisions of this Act; and

(2) In the event of violation of the provisions of paragraph (1), the contractor and any subcontractor responsible therefor shall be liable to such affected employee for his unpaid wages and shall, in addition, be liable to the United States (or, in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages as provided therein. Such liquidated damages shall be computed, with respect to each individual employed as a laborer or mechanic in violation of any provision of this Act, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this Act. The governmental agency for which the contract work is done or by which financial assistance for the work is provided may withhold, or cause to be withheld, subject to the provisions of section 104, from any moneys payable on account of work performed by a contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as herein provided.

SEC. 103. (a) The provisions of this Act shall apply, except as otherwise provided, to any contract which may require or involve the employment of laborers or mechanics upon a public work of the United States, of any territory, or of the District of Columbia, and to any other contract which may require or involve the employment of laborers or mechanics if such contract is one (1) to which the United States or any agency or instrumentality thereof, any territory, or the District of Columbia is a party, or (2) which is made for or on behalf of the United States, any agency or instrumentality thereof, any territory, or the District of Columbia, or (3) which is a contract for work financed in whole or in part by loans or grants from, or loans insured or guaranteed by, the United States or any agency or instrumentality thereof under any statute of the United States providing wage standards for such work: *Provided*, That the provisions of section 102, shall not apply to work where the assistance from the United States or any agency or instrumentality as set forth above is only in that nature of a loan guarantee, or insurance. Except as otherwise expressly provided, the provisions of the Act shall apply to all laborers and mechanics, including watchmen and guards, employed by any contractor or subcontractor in the performance of any part of the work contemplated by any such contract, and for purposes of this Act, laborers and mechanics shall include workmen performing services in

²Section 1241(a), Public Law 99-145 (99 Stat. 734) eliminated language applying the statutory overtime requirements to a workday of eight hours, effective January 1, 1986.

connection with dredging or rock excavation in any river or harbor of the United States or of any territory or of the District of Columbia, but shall not include any employee employed as a seaman.

(b) This Act shall not apply to contracts for transportation by land, air, or water, or for the transmission of intelligence, or for the purchase of supplies or materials or articles ordinarily available in the open market. This Act shall not apply with respect to any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (49 Stat. 2036; 41 U.S.C. 35-45).

SEC. 104. (a) Any officer or person designated as inspector of the work to be performed under any contract of the character specified in section 103, or to aid in the enforcement or fulfillment thereof shall, upon observation or investigation, forthwith report to the proper officer of the United States, of any territory or possession, or of the District of Columbia, all violations of the provisions of this Act occurring in the performance of such work, together with the name of each laborer or mechanic who was required or permitted to work in violation of such provisions and the day or days of such violation. The amount of unpaid wages and liquidated damages owing under the provisions of this Act shall be administratively determined and the officer or person whose duty it is to approve the payment of moneys by the United States, the territory, or the District of Columbia in connection with the performance of the contract work shall direct the amount of such liquidated damages to be withheld for the use and benefit of the United States, said territory, or said District, and shall direct the amount of such unpaid wages to be withheld for the use and benefit of the laborers and mechanics who were not compensated as required under the provisions of this Act. The Comptroller General of the United States is hereby authorized and directed to pay directly to such laborers and mechanics, from the sums withheld on account of underpayments of wages, the respective amounts administratively determined to be due, if the funds withheld are adequate, and, if not, an equitable proportion of such amounts.

(b) If the accrued payments withheld under the terms of the contracts, as aforesaid, are insufficient to reimburse all the laborers and mechanics with respect to whom there has been a failure to pay the wages required pursuant to this Act, such laborers and mechanics shall, in the case of a department or agency of the Federal Government, have the rights of action and, or of intervention against the contractor and his sureties conferred by law upon persons furnishing labor or materials, and in such proceedings it shall be no defense that such laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

(c) Any contractor or subcontractor aggrieved by the withholding of a sum as liquidated damages as provided in this Act shall have the right, within sixty days thereafter, to appeal to the head of the agency of the United States or of the territory for which the contract work is done or by which financial assistance for the work is provided, or to the Commissioner of the District of Columbia in the case of liquidated damages withheld for the use and benefit of said District. Such agency head or Commissioner, as the case may be, shall have authority to review the administrative determination of liquidated damages and to issue a final order affirming such determination; or, if it is found that the sum determined is incorrect or that the contractor or subcontractor violated the provisions of this Act inadvertently notwithstanding the exercise of due care on his part and that of his

agents, recommendations may be made to the Secretary that an appropriate adjustment in liquidated damages be made, or that the contractor or subcontractor be relieved of liability for such liquidated damages. The Secretary shall review all pertinent facts in the matter and may conduct such investigations as he deems necessary, so as to affirm or reject the recommendation. The decision of the Secretary shall be final. In all such cases in which a contractor or subcontractor may be aggrieved by a final order for the withholding of liquidated damages as hereinbefore provided, such contractor or subcontractor may, within sixty days after such final order, file a claim in the United States Claims Court: *Provided, however*, That final orders of the agency head, the Commissioner of the District of Columbia or the Secretary, as the case may be, shall be conclusive with respect to findings of fact if such findings are supported by substantial evidence.³

(d) Reorganization Plan Numbered 14 of 1950 (15 F.R. 3175; 64 Stat. 1267) shall be applicable with respect to the provisions of this Act, and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948, 54 Stat. 1236, 63 Stat. 108; 40 U.S.C. 276c), shall be applicable with respect to those contractors and subcontractors referred to therein who are engaged in the performance of contracts subject to the provisions of this Act.

SEC. 105. The Secretary may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act as he may find necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment of the conduct of Government business.

SEC. 106. Any contractor or subcontractor whose duty it shall be to employ, direct, or control any laborer or mechanic employed in the performance of any work contemplated by any contract to which this Act applies, who shall intentionally violate any provision of this Act, shall be deemed guilty of a misdemeanor, and for each and every such offense shall, upon conviction, be punished by a fine of not to exceed \$1,000 or by imprisonment for not more than six months, or by both such fine and imprisonment, in the discretion of the court having jurisdiction thereof.

SEC. 107. (a) It shall be a condition of each contract which is entered into under legislation subject to Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267), and is for construction, alteration, and/or repair, including painting and decorating, that no contractor or subcontractor contracting for any part of the contract work shall require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards promulgated by the Secretary by regulation based on proceedings pursuant to section 553 of title 5, United States Code, provided that such proceedings include a hearing of the nature authorized by said section. In formulating such standards, the Secretary shall consult with the Advisory Committee created by subsection (e).

(b) The Secretary is authorized to make such inspections, hold such hearings, issue such orders, and make such decisions based on findings of fact, as are deemed necessary to gain compliance with this section and any health and safety standard promulgated by the Secretary under subsection (a), and for such purposes the Secretary and the United States district courts shall have the authority and jurisdiction provided by sections 4 and 5 of the Act of June 30, 1936 (41 U.S.C. 38, 39). In the event that the Secretary of Labor determines noncompliance under the provisions of this section after an opportunity for an adjudicatory hearing by the Secretary of any condition of a contract of a type

³Section 160(a)(13), Public Law 97-164 (96 Stat. 48) substituted "United States Claims Court" for "Court of Claims".

described in clause (1) or (2) of section 103(a) of this Act, the governmental agency for which the contract work is done shall have the right to cancel the contract, and to enter into other contracts for the completion of the contract work, charging any additional cost to the original contractor. In the event of noncompliance, as determined by the Secretary after an opportunity for an adjudicatory hearing by the Secretary, of any condition of a contract of a type described in clause (3) of section 103(a), the governmental agency by which financial guarantee, assistance, or insurance for the contract work is provided shall have the right to withhold any such assistance attributable to the performance of the contract. Section 104 of this Act shall not apply to the enforcement of this section.

(c) The United States district courts shall have jurisdiction for cause shown, in any actions brought by the Secretary, to enforce compliance with the construction safety and health standard promulgated by the Secretary under subsection (a).

(d) (1) If the Secretary determines on the record after an opportunity for an agency hearing that, by repeated willful or grossly negligent violations of this Act, a contractor or subcontractor has demonstrated that the provisions of subsections (b) and (c) are not effective to protect the safety and health of his employees, the Secretary shall make a finding to that effect and shall, not sooner than thirty days after giving notice of the findings to all interested persons, transmit the name of such contractor or subcontractor to the Comptroller General.

(2) The Comptroller General shall distribute each name so transmitted to him to all agencies of the Government. Unless the Secretary otherwise recommends, no contract subject to this section shall be awarded to such contractor or subcontractor or to any person in which such contractor or subcontractor has a substantial interest until three years have elapsed from the date the name is transmitted to the Comptroller General. If, before the end of such three-year period, the Secretary, after affording interested persons due notice and opportunity for hearing, is satisfied that a contractor or subcontractor whose name he has transmitted to the Comptroller General will thereafter comply responsibly with the requirements of this section, he shall terminate the application of the preceding sentence to such contractor or subcontractor (and to any person in which the contractor or subcontractor has a substantial interest); and when the Comptroller General is informed of the Secretary's action he shall inform all agencies of the Government thereof.

(3) Any person aggrieved by the Secretary's action under subsections (b) or (d) may, within sixty days after receiving notice thereof, file with the appropriate United States court of appeals a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, who shall thereupon file in the court the record upon which he based his action, as provided in section 2112 of title 28, United States Code. The findings of fact by the Secretary, if supported by substantial evidence, shall be final. The court shall have power to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, the order of the Secretary or the appropriate Government agency. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(e) (1) The Secretary shall establish in the Department of Labor an Advisory Committee on Construction Safety and Health (hereinafter referred to as the 'Advisory Committee') consisting of nine members appointed, without regard to the civil service laws, by the Secretary. The Secretary shall appoint one such member as Chairman. Three members of the Advisory Committee shall be persons representative of contractors to whom this section applies, three members shall be persons representative of employees primarily in the building trades and construction industry engaged in carrying out contracts to which this section applies, and three public representatives who shall be selected on the basis of their professional and technical competence and experience in the construction health and safety field.

(2) The Advisory Committee shall advise the Secretary in the formulation of construction safety and health standards and other regulations, and with respect to policy matters arising in the administration of this section. The Secretary may appoint such special advisory and technical experts or consultants as may be necessary to carry out the functions of the Advisory Committee.

(3) Members of the Advisory Committee shall, while serving on the business of the Advisory Committee, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding \$100 per day, including traveltime; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently.

(f) The Secretary shall provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe working conditions in employments covered by the Act, and to collect such reports and data and to consult with and advise employers as to the best means of preventing injuries.

ADDITIONAL PROVISIONS OF THE
WORK HOURS ACT OF 1962

(76 Stat. 360)
(Public Law 87-581)

TITLE II - MISCELLANEOUS AND EFFECTIVE DATE

SEC. 202. (a) Section 1499 of title 28, United States Code, is hereby amended to read as follows:

“§ 1499. Liquidated damages withheld from contractors under Contract Work Hours *and* Safety Standards Act

“The United States Claims Court shall have jurisdiction to render judgment upon any claim for liquidated damages withheld from a contractor or subcontractor under section 104 of the Contract Work Hours *and* Safety Standards Act.”⁴

* * * * *

SEC. 203. The following statutes are hereby repealed: Sections 1 and 2 of the Act of August 1, 1892 (27 Stat. 340, 40 U.S.C. 321, 322), as amended by the Act of March 3, 1913 (37 Stat. 726); sections 892 and 893 of the Act of March 3, 1901 (31 Stat. 1334; D.C. Code, 1961 edition, secs. 22-3407, 3408); the Act of June 19, 1912 (37 Stat. 137; 40 U.S.C. 324, 325), as amended by the Act of June 25, 1948 (62 Stat. 989); that portion of the Naval Service Appropriation Act, 1918 (Act of March 4, 1917, 39 Stat. 1192), which is codified as section 326 of title 40 of the United States Code (1952 edition); and section 303 of the Second Supplemental Defense Appropriations Act, 1941 (54 Stat. 884; 40 U.S.C. 325a). The provisions of such statutes shall, notwithstanding, continue to apply with respect to contracts existing on the effective date of this Act or entered into pursuant to invitations for bids that are outstanding at the time of the enactment of this Act.

SEC. 204. This Act shall take effect sixty days after its enactment, but shall not affect any contract then existing or any contract that may thereafter be entered into pursuant to invitations for bids that are outstanding at the time of the enactment of this Act.

Approved August 13, 1962, 11:46 a.m.

⁴Section 133e(f) (1), (2)(a), Public Law 97-164 (96 Stat. 40, 41) substituted “United States Claims Court” for “Court of Claims” and added “and Safety” in the section catchline.

ADDITIONAL PROVISION OF THE AMENDMENTS TO ORIGINAL ACT.
CHANGING TITLE TO CONTRACT WORK HOURS AND SAFETY STANDARDS
ACT

(83 Stat. 98)
(Public Law 91-54)

SEC. 2. The first section and section 2 of the Act of August 13, 1962, are each amended by inserting "and Safety" after "Hours" each time it appears.

Approved August 9, 1969.

SECTION 2 OF THE ACT OF JUNE 13, 1934, AS AMENDED⁵
(40 U.S.C. 276c; 63 Stat. 108; 72 Stat. 967)

"The Secretary of Labor shall make reasonable regulations for contractors and subcontractors engaged in the construction, prosecution, completion or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States, including a provision that each contractor and subcontractor shall furnish weekly a statement with respect to the wages paid each employee during the preceding week. Section 1001 of Title 18 shall apply to such statements."

WALSH-HEALEY PUBLIC CONTRACTS ACT,
SECTIONS 4 AND 5

(41 U.S.C. 38, 39)

SEC. 4. The Secretary of Labor is hereby authorized and directed to administer the provisions of this Act and to utilize such Federal officers and employees and, with the consent of the State, such State and local officers and employees as he may find necessary to assist in the administration of this Act and to prescribe rules and regulations with respect thereto. The Secretary shall appoint, without regard to the provisions of the civil-service laws but subject to the Classification Act of 1949,⁶ an administrative officer, and such attorneys and experts, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as he may from time to time find necessary for the administration of this Act. The Secretary of Labor or his authorized representatives shall have power to make investigations and findings as herein provided, and prosecute any inquiry necessary to his functions in any part of the United States. The Secretary of Labor shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act.

⁵Reorganization Plan Numbered 14 of 1950, referred to in section 104(d) of CWHSSA, will not be included here. It appears at 5 U.S.C., Appendix, 1970 Ed., p. 534; 64 Stat. 1267; 15 F.R. 3175.

⁶Act of Oct. 28, 1949 (63 Stat. 972) amended section by substituting reference to "Classification Act of 1949" for "Classification Act of 1923."

SEC. 5. Upon his own motion or on application of any person affected by any ruling of any agency of the United States in relation to any proposal or contract involving any of the provisions of this Act, and on complaint of a breach or violation of any representation or stipulation as herein provided, the Secretary of Labor, or an impartial representative designated by him, shall have the power to hold hearings and to issue orders requiring the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy, failure, or refusal of any person to obey such an order, any District Court of the United States or of any Territory or possession, or the United States District Court for the District of Columbia,⁷ within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person who is guilty of contumacy, failure, or refusal is found, or resides or transacts business, upon the application by the Secretary of Labor or representative designated by him, shall have jurisdiction to issue to such person an order requiring such person to appear before him or representative designated by him, to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question; and any failure to obey such order of the court may be punished by said Court as a contempt thereof; and shall make findings of fact after notice and hearing, which findings shall be conclusive upon all agencies of the United States, and if supported by the preponderance of the evidence, shall be conclusive in any court of the United States; and the Secretary of Labor or authorized representative shall have the power, and is hereby authorized, to make such decisions, based upon findings of fact, as are deemed to be necessary to enforce the provisions of this Act.

⁷Act of May 24, 1949 (63 Stat. 107), substituted the term "United States District Court for the District of Columbia" for the term "District Court of the United States for the District of Columbia."

**CONTRACT WORK HOURS AND
SAFETY STANDARDS ACT¹**

(40 U.S.C. 327, et seq.)

AN ACT

To establish standards for hours of work and overtime pay of laborers and mechanics employed on work done under contract for, or with the financial aid of, the United States, for any territory, or for the District of Columbia, and for other purposes.

To promote health and safety in the building trades and construction industry in all Federal and federally financed or federally assisted construction projects.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Work Hours and Safety Act of 1962" and title I may be cited as the "Contract Work Hours and Safety Standards Act."

SEC. 2. As used in this Act, the term "this Act" means the Work Hours and Safety Act of 1962 except in title I, where it means the Contract Work Hours and Safety Standards Act.

¹Public Law 87-581, 76 Stat. 357, as amended by Public Law 91-54, 83 Stat. 96; by sections 133(c)(1), (2)(a), and 160(a)(13), Public Law 97-164, 96 Stat. 40, 41, 48; and by section 1241, Public Law 99-145, 99 Stat. 734.