UNC SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 30 | Number 3 Article 2

4-1-1952

The Operation of the Wage and Hour Law in North Carolina and the South

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THE OPERATION OF THE WAGE AND HOUR LAW IN NORTH CAROLINA AND THE SOUTH*

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The Fair Labor Standards Act[1] of 1938 was intended to erect a floor under wages, a ceiling over hours worked without overtime pay, and a barrier against child labor. Designed as one of various legislative attempts to deal with unemployment, low mass purchasing power and substandard living conditions,[2] it has survived a world war and an unsettled period of high inflation. However, the Act's administrative enforcement continues to encounter considerable employer non-compliance with its basic provisions.

Although unique in many ways, the FLSA flowed out of earlier national experience,[3] especially with the wage and hour standards of the industry codes under the National Industrial Recovery Act of 1933.[4] While no Southern state had passed comprehensive minimum wage

* As used here, the South includes the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North and South Carolina, Oklahoma, Tennessee, Texas and Virginia. The over-all or "average" statistics about the South given in this article can in no wise take into account the wide variations known to exist within the South.

The preparation of this article was greatly aided by the officials in charge of Wage and Hour enforcement in North Carolina, especially: Hon. Forrest H. Shuford, Commissioner of Labor; Mrs. Pauline V. Horton, federal representative of the Wage and Hour Division; and Mr. D. Lacy McBryde, representative of the Solicitor of Labor, all of Raleigh, N. C. Vital data, not otherwise available, was provided by: Hon. William S. Tyson, Solicitor of Labor; Mr. Harry S. Kantor, research director of the Wage and Hour Division; Mr. W. H. Speck, of the Administrative Office of United States Courts, all of Washington, D. C. The author is indebted to each of these individuals, but they are in no wise responsible for the use made of the data they supplied.

Since 1942, inspection under the Walsh-Healey Public Contracts Act has been performed by the Wage and Hour Division so that results of investigations and other statistics may show violations under both Acts.

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[1] 52 STAT. 1060 (1938), 29 U. S. C. §§201-219 (1946).

[2] Section 2(a) of the Act; 1948 ANN. REP., Wage and Hour and Public Contracts Division of the United States Department of Labor 1 (hereinafter referred to as W-H ANN. REP.); *Hearings before a Subcommittee of the Committee on Labor and Public Welfare on S. 58-S. 653,* 81st Cong., 1st Sess. 21 and 164 (1949); Herman, *The Administration and Enforcement of the Fair Labor Standards Act,* 6 LAW & CONTEMP. PROB. 368 (1939). Cf. Burstein, *The Fair Labor Standards Act—A Legal and Economic Study,* 6 LAW. GUILD REV. 576 (1946). See Wecht, *Legal and Practical Aspects of the Federal Fair Labor Standards Act,* 56 DICK L. REV. 21, 28 (1951), for seven purposes courts have ascribed to the FLSA. Van Sickle, *Geographical Aspects of a Minimum Wage,* 24 HARV. BUS. REV. 277 (1946) presents an attack on the basic FLSA premises.

[3] 1939 W-H ANN. REP. 1-3; DeVyver, *Regulation of Wages and Hours Prior to 1938,* 6 LAW & CONTEMP. PROB. 323 (1939).

[4] DeVyver, *supra* note 3; *Hearings, supra* note 2, at 134.

legislation by 1938,[5] or has since then,[6] state regulation of hours worked, usually those of women and children, provided some regional precedent.[7]

This article will deal with certain aspects of FLSA industrial effects, coverage, procedure, enforcement and litigation[8] in the South, in the light of the recent growth in Southern industrial employment.[9] Particular attention will be directed to the factual and legal impact of the FLSA upon North Carolina, which is the leading industrial state in the South,[10] and the nation's largest producer of textiles, cigarettes and wood furniture.

[5] Existing legislation in four Southern states is restricted to women and minors, and only the Kentucky law is functioning. Arkansas in 1915 established a fixed per diem minimum wage which amounts to less than 16¢ per hour. The Louisiana law providing for rates recommended by wage boards has been completely inoperative since its passage in 1938. A comprehensively-written Oklahoma statute was declared unconstitutional as to its coverage of men and boys, and its orders covering women are unenforced due to injunction. 71 MONTHLY LAB. REV. 460 (1950); 63 MONTHLY LAB. REV. 535 (1946); 48 MONTHLY LAB. REV. 293 (1939). See Associated Industries of Oklahoma v. Industrial Welfare Commission, 185 Okla. 177, 90 P. 2d 899 (1939).

[6] Only three state minimum wage laws were adopted subsequent to the effective date of the FLSA: those of Maine, Alaska and Hawaii. 71 MONTHLY LAB. REV. 460, 461 (1950). For data on some early wage-hour bills which failed in Southern legislatures, see Stitt, *State Fair Labor Standards Legislation,* 6 LAW & CONTEMP. PROB. 454, 460 (1939). The present statutory situation and 1951 efforts are described in 73 MONTHLY LAB. REV. 687 (1951). Data used in Table 1, comparing 1950 non-agricultural employment and FLSA covered employees, indicate the present area of need.

In North Carolina, the Commissioner of Labor has consistently recommended passage of state wage-hour legislation. The most recent estimate of the state's retail and service industries alone indicates that 65,000 workers receive 50¢ per hour or less, with more than 26,000 of these receiving under 40¢ per hour. BIENNIAL REP., N. C. DEP'T. OF LAB. 13-15 (1950). Proposed North Carolina minimum wage legislation in 1951, which drew employer association opposition, would have applied to 200,000 workers, mostly in service industries. Raleigh (N. C.) News & Observer, Mar. 3, 1951, §1, p. 14, col. 1. For earlier efforts to secure state FLSA legislation and reports of the General Assembly commission on such legislation, see 12 N. C. LAB. & IND. 1 (April, 1945); 8 N. C. LAB. & IND. 1 (Feb., 1941); 7 N. C. LAB. & IND. 2 (Dec., 1940); Raleigh (N. C.) News & Observer, Mar. 10, 1939, §1, p. 4, col. 1.

[7] The first attempt at labor legislation in North Carolina was a 10-hour per day bill introduced in the 1883 General Assembly. The establishment in 1887 of a state bureau of labor statistics (forerunner of the present Department of Labor), one of the demands of the Knights of Labor, was the first in the South. By 1937, the state had child labor legislation of the modern type. DAVIDSON, CHILD LABOR LEGISLATION IN THE SOUTHERN TEXTILE STATES, c. 6 and 8 (1939). For present hours regulation, see N. C. GEN. STAT. §§95-17 and 95-26 (1950).

[8] Except incidentally, no attempt will be made in this article to deal with the substantive law under the FLSA. See LIVENGOOD, THE FEDERAL WAGE AND HOUR LAW (1951) *passim;* WECHT, WAGE-HOUR LAW (1951) *passim.*

[9] Time, Dec. 10, 1951, pp. 22-27; Raleigh (N. C.) News & Observer, February 17, 1952, §1, p. 14, col. 3. See Note, 9 DUKE B. A. J. 15 (1941) and DeVyver, *Labor Factors in the Industrial Development of the South,* 18 So. ECON. J. 189 (1951).

[10] As of September, 1951, the number of manufacturing employees in the leading Southern states was: North Carolina, 423,200; Texas, 399,100 and Georgia, 293,100. 73 MONTHLY LAB. REV. 738 (1951). In December, 1951, North Carolina non-agricultural employment passed the one million mark. 19 N. C. LAB. & IND. 5 (Feb., 1952).

IMPACT ON SOUTHERN WAGE AND HOUR PATTERNS

In April, 1939,[11] as shown in Table 1, the estimated number of employees in the continental United States covered by the FLSA was about twelve and one-half million, with 2,285,400 in the South, or 18% of the total. Yet of the 650,000 employees in the nation who were to receive increases in accordance with the 1939 minimum wage of 30¢ per hour, 63% were in the South, with North Carolina leading the nation in the number of employees directly benefiting.[12] The regional effect is also indicated industry-wise. Over one half of the 468,100 manufacturing employees in the nation receiving less than 30¢ per hour at that time, were in key Southern industries.[13] In North Carolina, in one month between October and November, 1939 (the statutory increase intervening),[14] average hourly earnings in the lumber industry increased 12.0%, silk and rayon, 6.9% and cotton goods, 6.7%;[15] in the same period, the figure for all manufacturing industries in the nation increased one per cent.[16] Of special significance to the South from 1939 to 1944 were many of the 114 wage recommendations drafted by 71 specific industry committees under which 2,700,000 direct wage increases were granted, and the 40¢ per hour minimum wage achieved prior to the time limit set in the Act.[17] The wage determinations made pursuant to the

[11] Earlier approximations were made prior to the establishment of a separate Wage and Hour Division. Recently made estimates of national coverage as of 1939 indicate how conservative the contemporary figures, as given in Table 1, were. See 1948 W-H ANN. REP. 80.

[12] Georgia, South Carolina, Alabama and Tennessee also had more such low-paid employees than *any* state outside the South.

[13] 96,200 were in saw-mills, 51,300 in cotton goods, 28,100 in knit goods, 19,300 in furniture and mill-work, 15,100 in cotton-seed milling, 12,500 in fertilizer, and 10,500 in silk and rayon mills. 1939 W-H ANN. REP. 41.

Between November, 1938 and November, 1939, average hourly earnings in manufacturing industry as a whole rose *less* than 2% yet the following increases were noted in industries with large Southern production: cotton seed oil, 13.5%; saw-mills, 8.2%; shirts, 7.9%; cotton good, 7.1%; fertilizer, 6.6%; silk-rayon, 6.2%; and brick-tile, 6.1%. 50 MONTHLY LAB. REV. 541, 547 (1940).

See Douty, *Minimum Wage Regulation in the Seamless Hosiery Industry*, 8 So. ECON. J. 176 (1941); Moloney, *Some Effects of the Federal Fair Labor Standards Act upon Southern Industry*, 9 So. ECON. J. 15, 17 (1942) (large percentage of workers in South below 25¢ per hour in 1938).

[14] In the textile industry a 32½¢ per hour minimum wage order became effective on the same date as the statutory 30¢ per hour minimum wage. 1939 W-H ANN. REP. 44.

[15] 6 N. C. LAB. & IND. 2 (Dec., 1939).

[16] 50 MONTHLY LAB. REV. 520 (1940).

[17] 1948 W-H ANN. REP. 7 and 167; 51 MONTHLY LAB. REV. 551, 553 (1940). More than 20,000 North Carolina tobacco workers were expected to benefit from one wage order. 9 N. C. LAB. & IND. 2 (Feb., 1942); 4,200 railroad employees in North and South Carolina received increases pursuant to that industry wage order. 8 N. C. LAB. & IND. 1 (Mar., 1941). The effects on Southern lumber employees of industry committee wage orders is detailed in *Hearings, supra* note 2, at 151.

Section 5 of the Act is now only operative in Puerto Rico and the Virgin Islands. See data in note 147, *infra*.

Walsh-Healey Public Contracts Act[18] for work done under government contracts have had some regional results, considerably lessened by the Southern wage differentials included.[19]

TABLE 1

Estimated Number of Southern Employees in 1939 Covered by Section 6 of the FLSA, with Estimated Number Directly Benefiting from 30¢ Minimum Wage of 1939.

Estimated Number of Southern Employees in 1950 Covered by Section 6 of the FLSA, with Estimated Total of Non-Agricultural Employment in the South.

	Covered Employees, April, 1939*	Covered Employees With Wages Under 30¢, 1939*	Covered Employees, Aug., 1950‡	Total Non-Agricultural Employment, Aug., 1950†
Alabama	173,300	38,200	302,300	611,400
Arkansas	66,600	17,100	111,900	297,900
Florida	102,700	23,800	189,300	643,200
Georgia	215,000	57,000	362,300	802,700
Kentucky	181,500	13,500	264,300	§
Louisiana	136,500	22,600	263,600	§
Mississippi	71,400	26,000	116,900	§
North Carolina	322,200	60,600	460,400	903,400
Oklahoma	104,600	5,700	170,900	477,900
South Carolina	156,200	41,400	232,000	450,700
Tennessee	212,000	43,200	321,000	740,500
Texas	330,000	35,500	746,000	1,920,900
Virginia	213,400	26,600	331,900	789,900
TOTAL, South	2,285,400	411,200	3,872,800	§
TOTAL, U. S. (Continental)	12,496,000	650,000	20,933,100	45,080,000‡

*51 MONTHLY LAB. REV. 552 (1940). Cf. note 11, *supra*.
‡1950 W-H ANN. REP. 318.
†73 MONTHLY LAB. REV. 341 (1951).
‡73 MONTHLY LAB. REV. 332 (1951).
§Figures not available.

The 75¢ per hour minimum wage, the major change achieved by the 1949 Amendments,[20] became effective January 25, 1950. It required increases in the wages of an estimated one and one-half million employees nationally,[21] with its most direct effect in the South.[22] In the

[18] 49 STAT. 2036 (1936), as amended; 41 U. S. C. §§35-45 (1946).

[19] Recent summaries of existing determinations are in U. S. News & World Report, Feb., 1, 1952, p. 44; 2 LAB. L. J. 935 (1951) (Southern wage differentials still range from 14½¢ to 20¢ per hour in certain industries).

The 13 Southern states had far less than their proportionate share of the government contracts subject to the Walsh-Healey Act. Of more than ten billion dollars worth of such contracts in fiscal 1951, only 7% had prime contractors in the South and only 11% were performed in the region. 1951 W-H ANN. REP. 51.

[20] 63 STAT. 910 (1949), 29 U. S. C. §§ 201-217 (Supp. III, 1950).

[21] 1950 W-H ANN. REP. 262.

[22] *Hearings, supra* note 2, at 146-150 and 712-716; note 32, *infra*. See 72 MONTHLY LAB. REV. 33 (1951) for contrasting effect of the new 75¢ minimum in various sections of the nation. An estimated 65,000 North Carolina industrial workers directly benefited from the new minimum wage. Raleigh News & Observer, Oct. 22, 1949, §1, p. 16, col. 3. See ECONOMY OF THE SOUTH, Report of the Joint Committee on the Economic Report, 81st Cong., 1st Sess., 48-49 and 80-82 (1949) for a conservative estimate of possible effects.

fall of 1949, 72% of the 134,136 Southern saw-mill workers received *less* than 75¢ per hour; by March, 1950, 93% of those so employed earned at least the new minimum wage.[23] About one-half of the fertilizer industry is located in the South, where the effects of the 75¢ minimum were equally pronounced: in the spring of 1949, 45% of the 15,710 Southern fertilizer workers received less than 75¢, but by the spring of 1950, over 90% were paid the statutory minimum wage or more.[24] Of some 18,000 dress shirt workers in the Southeast, where one-quarter of the industry is located, 58% received less than 75¢ per hour in August, 1949; by March, 1950, less than 5% were paid below the new 75¢ minimum.[25] Studies in the Southern furniture[26] and seamless hosiery[27] industries indicate similar regional results. While other factors must also be taken into account in assessing the significance of such changes,[28] the primary cause seems to have been the direct effect of the new statutory minimum wage.

However possible it may be to examine the *direct* wage effects of the FLSA minimum wage provisions, or even the effects of the statutory requirement of overtime payments,[29] it is much more difficult to compute the myriad *indirect* effects on wages, such as compensating increases given to covered employees in wage brackets *above* the minimum,[30] to non-covered employees, or to employees in non-covered establishments.[31] Nor can we here deal with such matters as increased

[23] 71 MONTHLY LAB. REV. 313 (1950). The effect of the new minimum wage was to raise the average of hourly earnings 11¢ throughout the region, 16¢ in Alabama and Georgia, and 13¢ in Mississippi and South Carolina. The study uses West Virginia and omits Oklahoma in compiling Southern totals.

[24] 72 MONTHLY LAB. REV. 33 (1951). Over two-thirds of the fertilizer workers in Alabama, and 56% of those in Georgia had been earning less than 75¢ per hour in 1949.

[25] 73 MONTHLY LAB. REV. 166 (1951). In the Southwest, however, 73% of all shirt workers were earning under 75¢ per hour in 1949.

[26] The three concentration areas for Southern furniture manufacturing are: Martinsville, Va., Morganton-Lenoir, N. C., and Winston-Salem-High Point, N. C. In September, 1949, between 6% and 13% of these employees averaged less than 75¢ per hour; by March, 1950, none of the 15,753 employees in these areas was reportedly paid less than the new minimum. 72 MONTHLY LAB. REV. 672 (1951).

[27] The seamless hosiery industry of the Hickory-Statesville and Winston-Salem High Point areas of North Carolina, in October, 1949, paid wages under 75¢ per hour to between 13% and 40% of its employees; by March, 1950, over 98% of these 10,819 workers received wages meeting at least the statutory minimum wage. 72 MONTHLY LAB. REV. 674 (1951).

[28] The cautious approach is adopted in 1950 W-H ANN. REP. 260 ff., where several other factors are considered.

[29] In April, 1939, an estimated 420,400 workers in 13 Southern states (of 1,663,500 such employees in the nation) were expected to benefit from the 1939 statutory requirement of time and one-half pay for hours worked over 42 in one week. 51 MONTHLY LAB. REV. 552 (1940). See Moloney, *supra* note 13, at 19, for the effect on the traditional 12-hour shift in the exempted cottonseed industry.

[30] In the shirt industry of the South, substantial numbers of employees were added to the wage brackets above 80¢ per hour following the institution of the 75¢ minimum. 73 MONTHLY LAB. REV. 166 (1951). But see 71 MONTHLY LAB. REV. 313 (1950) for low-wage bracket concentration in Southern sawmills.

[31] In the lumber industry, the amended FLSA exempted most logging employees,

mechanization, greater managerial efficiency, compression of the wage scale range, lay-offs of older workers, decreased hours worked or lessened employment.[32]

NORTH CAROLINA COVERAGE AND EXEMPTIONS

The FLSA has probably the broadest range of applicability of all the labor regulation statutes, although coverage was somewhat reduced by the 1949 Amendments.[33] Its minimum wage provisions cover almost a half-million North Carolina employees. Table 2 indicates the breadth of its 1950 coverage, particularly in various manufacturing industries. It must be kept in mind that coverage is on an employee basis and not all employees within a "covered" establishment are actually covered. A breakdown into industrial categories[34] reveals an *absolute* coverage in respect to all establishments producing certain goods. In the following manufacturing industries, every plant in the state is covered, even though only employing one or two persons: tobacco, clothing, leather, wooden containers, paper, paint, vegetable and animal oils, rubber, and metal products. Of 2,502 North Carolina manufacturing establishments in *all* industries employing 20 or more persons, only 32 (nearly all in food products) are not covered. While only 2½% of all the nation's

yet some 40,000 such workers in the South received approximately the same increase which *covered* saw-mill employees secured due to the new statutory minimum. 71 MONTHLY LAB. REV. 313 (1950).

In the fertilizer industry, too, a substantial number of employees in intrastate commerce received wage adjustments within a few days of the effective date of the new minimum wage. 72 MONTHLY LAB. REV. 33, 35 (1951).

[32] Many of these effects are dealt with in 1950 W-H ANN. REP. 260-272. See Wall Street Journal, March 21, 1950, for an exaggerated account of effects in North Carolina. An extreme example of the narrowing wage range is in the Southern saw-mill industry, where, by March, 1950, 67% of *all* employees were in the wage bracket between 75¢ and 80¢ per hour. 71 MONTHLY LAB. REV. 313 (1950). Later studies in the furniture and seamless hosiery industries indicate a gradual spread in the wage range following the impact of the new rate. 72 MONTHLY LAB. REV. 672-676 (1951).

For the effects of the FLSA in earlier years, see Douty, *supra* note 13; Moloney, *supra* note 13. In Van Sickle, *supra* note 2, at 290, are echoed some of the dire warnings issued by employer groups, though subsequent investigations reveal little substance. Of the contemplated (1946) increase in minimum wage, Southern industry "cannot absorb any such wage increases" and many "will be obliged to reduce their present scale of operations or close down entirely."

[33] 1950 W-H ANN. REP. 274; LIVENGOOD, *op. cit. supra* note 8, at 39; Tyson, *The Fair Labor Standards Amendments of 1949—Wage and Hour Coverage*, 28 N. C. L. REV. 161 (1950).

[34] The material which follows is based on photo-copy data supplied the writer by the Wage and Hour Division, with estimates made as of January 1, 1950. However, the figures for several non-manufacturing industries are based upon 1946 and 1948 data. *Caveat:* an establishment is considered covered if only one or two employees in it are subject to the Act.

As to the data appearing in Table 2 from this source, certain discrepancies, not therein apparent, would increase slightly both the number of covered and total establishments. Wage and Hour officials at Raleigh, N. C., believe that the figures need revision upward, and that there are presently 10,000 manufacturing establishments and 300 mines in the state. Also, see 1950 W-H ANN. REP. 272-280 for helpful discussion.

TABLE 2

Estimated 1950 FLSA Coverage and Distribution by Industries of North Carolina Employees and Establishments, Compared with Total Number of Employees and Establishments.

	Total, Non-Agricultural Employment, Aug., 1950*	FLSA Covered Non-exempt Employees, Aug., 1950‡	Total No. Establishments with Employees, Jan., 1950†	Covered Establishments, Jan., 1950†
TOTAL, all industries	903,400	460,358	19,168	13,993
Manufacturing Industries	416,900	364,182	7,598	6,361
Food and tobacco	51,000	48,269	833	602
Textile, apparel, leather	240,500	217,938	1,103	1,090
Lumber, furniture, wood	74,500	58,105	4,476	3,559
Paper, printing, publishing	14,600	11,713	410	367
Chemicals, rubber, etc.	8,300	7,983	193	190
Stone, clay, glass	6,900	5,059	255	227
Metal and related products	17,500	14,458	275	275
Miscellaneous	3,600	657	53	51
Non-Manufacturing Industries	453,500	96,176	11,570	7,632
Mining	3,800	2,598	95	83
Construction	‡	11,245	3,246	457
Trade	156,700	20,188	2,977	2,741
Finance, insurance, real est.	19,900	10,919	1,621	1,599
Transportation, utilities	51,800	45,690	2,120	2,032
Miscellaneous	221,300	5,449	1,511	720
Agriculture, forestry and fishery industries	‡	87	‡	‡
Establishments with 1 employee			3,678	2,296
2 or 3 employees			4,104	2,497
4 to 7 employees			4,560	2,678
8 to 19 employees			3,461	2,476
20 to 49 employees			1,791	1,426
50 to 99 employees			669	587
100 and more employees			945	913

*Source of total figure, 73 MONTHLY LAB. REV. 341 (1951). Classification by industrial category here is only a rough approximation of figures given in other columns, as "miscellaneous" includes some listed categories. The total of listed figures does not equal the total given because the survey used reported only 870,400 employees in non-agricultural employment. 17 N. C. LAB. & IND. 2 (Nov., 1950).

‡From table prepared for the writer by Wage and Hour Division.

†From photo-copy data described in note 34, *supra*.

‡Not available.

covered establishments of all sizes and industries are located in the state,[35] in *certain* manufacturing industries a large per cent of all covered establishments with 100 or more employees in the nation are found in North Carolina: tobacco manufacturing, 23%; knitting mills, 23%; textile mills, 18%; and furniture plants, 11%. The largest number of *non*-covered manufacturing establishments in the state is in lumber, with 315 logging operations (of 358) and 585 sawmills, planing and plywood mills (of 3,671) outside FLSA coverage. Nearly all banking and in-

[35] 1950 W-H ANN. REP. 277-278.

surance institutions in the state are covered, but only 14% of the 3,246 construction establishments are under FLSA coverage.[36]

Although "covered," nine million employees in the nation are exempted from the statutory provisions. Many of the Act's complex occupational exemptions[37] are in conflict with its concept of basic coverage and reflect pressures from special groups.[38] Some exemptions exclude certain types of employees entirely from the minimum wage and overtime requirements, but others eliminate only the minimum wage provision or only remove or relax the overtime requirement.[39] The exemptions of "white collar" employees, seamen, retail or service establishments, taxicabs and the like, have no readily ascertainable regional effects.

However, the South as a leading agricultural region is seriously affected by most of the agricultural handling or processing type exemptions, including the "area of production" test,[40] as well as the new lumbering exemption,[41] and the seasonal industry exemption from overtime payment.[42] Some 60,000 employees in cotton ginning, compressing and warehousing, and in tobacco warehouses and buying, as of 1947, were *completely* exempted from all wage and hour requirements.[43] In addition, a large proportion of the 275,000 other employees wholly exempted are located in the South, inasmuch as most of them were in industries like fruit and vegetable canning, preserving and packing, and dairy products.[44] Over one-half of the 166,000 employees fully exempt from any overtime requirement are located in the South, since 75,000 of such workers are engaged in cotton ginning, compressing and cottonseed processing alone.[45] Forty thousand employees in tobacco stemming, redrying and warehouses are partially exempt from the overtime provi-

[36] See note 34, *supra*. There is probably considerable regional significance in the non-covered status of employees engaged in the construction, maintenance and repair of houses furnished workers by production companies. See Coomer v. Durham, 93 F. Supp. 526 (W. D. Va. 1950) (coal mine housing); Morris v. Beaumont Mfg. Co., 84 F. Supp. 909 (W. D. S. C. 1947) (textile mill village). Cf. Waialua Agricultural Co., Ltd. v. Maneja, 97 F. Supp. 198 (D. C. Hawaii 1951) (sugar plantation village).

[37] The "area of production" concept alone required numerous hearings, many special reports and studies and 24 volumes of evidence prior to issuance of a definition. After several revisions and another series of hearings, the definition is about to undergo *re*definition. See 1948 W-H ANN. REP. 129; 1950 W-H ANN. REP. 283.

[38] LIVENGOOD, *op. cit. supra* note 8, at 12 and 71; *Hearings, supra* note 2, at 173; note 153, *infra*. See 1948 W-H ANN. REP. 79-149; 1950 W-H ANN. REP. 280-292.

[39] LIVENGOOD, *op. cit. supra* note 8, c. 4, has a thorough explanation of the various types of exemptions.

[40] Sections 3(f), 7(c), 13(a)(6, 10), 13(b)(5). Also, the "fishing" exemption is regionally significant. Sections 13(a)(5) and 13(b)(4).

[41] Section 13(a)(15). Some "agricultural" forestry operations may come under the exemption in Section 13(a)(6).

[42] Section 7(b)(3).

[43] 1948 W-H ANN. REP. 125. The 1949 Amendments would not have worked a downward revision in the figures. Most of the workers in these wholly exempted operations are Negroes in the South. See p. 271, and notes 148 and 153, *infra*.

[44] 1948 W-H ANN. REP. 125. [45] *Ibid.*

sions.[46] In September, 1951, there were 24,000 tobacco stemming and redrying plant employees in North Carolina alone.[47] Often overlapping these specific exemptions are the Administrator's findings that certain industries are of a "seasonal nature"[48] and thereby entitled to a 14-week exemption from overtime payments. Among the Southern industries under such seasonal exemption are: raw-cotton warehousing, pulpwood-sap-peeling, green leaf tobacco,[49] cotton ginning,[50] rice, cane sugar, citrus canning, fiber and wool.[51]

The exemption for learners,[52] as shown in the number of learner certificates issued, reflects the impact of the minimum wage. In the first years after 1938 large numbers were issued dwindling down to almost none by 1949.[53] With the 75¢ minimum effective in 1950, a new upsurge took place.[54] It is significant that 47% of all learner certificates issued in 1939 were granted to Southern industry.[55] And the industries which were permitted to employ large numbers of learners in 1950, were well represented in the South.[56]

VIOLATIONS AND RESTITUTION IN THE SOUTH

Although investigation annually reaches only a small proportion of all covered employees and establishments, results are revealing. The 1951 fiscal year was the first full operational period after the 1949 Amendments became effective. With the 75¢ minimum wage and somewhat stronger child labor provisions[57] in effect, both these classifications of violations showed substantial increases, as indicated in Table 3.

Certain regional observations are possible based on the data in Table 3. While 18% of all FLSA covered employees are in the South, and only 16% of all employees reached by investigation annually are located here,[58] yet in fiscal 1951, 31% of all minimum wage violations and 40% of all child labor violations[59] were found in establishments in this region.

[46] *Ibid.*

[47] 18 N. C. LAB. & IND. 3 (Dec., 1951).

[48] Section 7(b)(3). Once a seasonal exemption is expressly granted to a particular industry, it applies to all employees therein, even those who work year round.

[49] LIVENGOOD, *op. cit. supra* note 8, at 95.

[50] 2 LAB. L. J. 132 (1951).

[51] 1950 W-H ANN. REP. 229.

[52] Sections 13(a)(7) and 14.

[53] 1950 W-H ANN. REP. 240.

[54] *Ibid.*

[55] 1939 W-H ANN. REP. 143 covers the period until Dec. 15, 1939. Of 1,118 learner applications received from the hosiery and textile industries in fiscal 1941, 54% were from the South. 1941 W-H ANN. REP. 143.

[56] 1950 W-H ANN. REP. 241 indicates that the bulk of such learners were in the apparel, hosiery, shoe and textile industries. Of learner certificates granted between Jan. 25, and June 30, 1950, 26% were in the South. Of the certificates granted in the hosiery and textile industries, 30% went to North Carolina firms. (From mimeographed statistical data prepared by the Wage and Hour Division.)

[57] 1951 W-H ANN. REP. 29.

[58] A larger proportion, however, of the total number of establishments investigated is located in the South.

[59] Alabama led the nation in the number of child labor violations, with 300, or 10% of the national total. 1951 W-H ANN. REP. 56-57.

TABLE 3

A Comparison of Certain Aspects of Investigation Results in the United States and the South for Fiscal 1949-1951.*

	Number of Covered Employees in Establishments Investigated	Total Number Establishments Investigated	Establishments in Violation			Number Underpaid Employees	
			Basic Provisions	Minimum Wage	Child Labor	Total	Minimum Wage
1949							
U. S.....	1,559,085	32,012	18,180	1,580	1,807	186,310	15,888
South.....	256,643	6,305	4,050	451	540	52,042	5,123
1950							
U. S.....	1,515,663	26,189	13,446	1,494	1,676	140,872	11,899
South.....	213,583	4,621	2,879	403	451	53,844	3,053
1951							
U. S.....	1,570,032	33,479	18,908	6,319	3,018	139,038	42,642
South.....	259,930	6,980	5,056	1,969	1,344	46,534	19,535

*Data from Appendix Tables, W-H Ann. Rep. for 1949-1951. The "U. S." total includes figures for Puerto Rico and other possessions, which seriously affects the regional proportion which the South bears to the continental United States, as in the ratio of employees underpaid because of minimum wage violations, fiscal 1949-1950.

Even more significant is the comparative ratio of affected employees. One third of all underpaid[60] workers discovered in the nation were in the South. In fiscal 1951, 46% of all employees underpaid because of minimum wage violations were in this region.[61] Of every 100 covered employees in the nation reached by investigation, three were receiving less than the minimum wage and nine in all were underpaid. But of every 100 such workers in the South, eight were getting less than the minimum wage and eighteen in all were underpaid. Of every 100 inspected employees in Arkansas and Mississippi, 42 in the former and 38 in the latter state were not paid according to statute.[62] In fiscal 1951, 36% of the total back wages owed employees because of monetary violations was due in the South, as shown in Table 5. Of 19 states in each of which over $200,000 or more in back wages was owed, nine were in the South.[63] Except for New York, Texas led the nation in the actual number of underpaid employees and total wages due.[64]

In fiscal 1951, 56% of all investigated establishments in the United States were in violation of basic statutory provisions, with considerable

[60] "Underpaid" employees include those who did not receive their full wages either under the minimum wage or overtime provisions or both.

[61] In fiscal 1949, North Carolina led the nation in the number of underpaid employees due to minimum wage violations. 1949 W-H Ann. Rep. 38-39. In fiscal 1950, Georgia led the nation in the total number of underpaid employees, with 19% of the national total. 1950 W-H Ann. Rep. 298.

[62] 1951 W-H Ann. Rep. 56-57.

[63] *Ibid.*

[64] *Ibid.*

variation according to industry.[65] However, in several Southern states, a much higher percentage of violation was discovered: Alabama and Mississippi, 85%; South Carolina, 82%; Louisiana, 79%; Arkansas, 78%; Georgia, 77%; and Texas, 75%.[66] Of all investigated establishments nationally, 19% were in violation of the minimum wage provision.[67] But in at least three Southern states, the ratio of minimum wage violations more nearly approximated that in Puerto Rico[68] than that of the continental United States: Arkansas, 44%; Georgia, 42%; and Mississippi, 36%.[69]

As shown by statistics in Table 4, 59% of all investigated establishments in North Carolina were in violation of basic FLSA provisions, and 27% failed to observe the statutory minimum wage.[70] A majority of all food manufacturing establishments investigated were in violation of the minimum wage provision, and a high violation rate characterized the textile, paper, transportation and financial industry groups. Breaking the statistics given in Table 4 down into particular industrial categories, one half or more of the investigated establishments in the following industries showed minimum wage violations:[71] meat products manufacturing, grain mills, bakery and miscellaneous food products, clothing manufacturing, miscellaneous fabricated textiles, leather manufacturing, commercial printing, and banking.[72] In all but one of these industrial categories the North Carolina minimum wage violation ratio was more than *twice* as high as the national ratio for that industry group.[73] National statistics indicate that large sized establishments with 50 or more employees have a higher ratio of violations of basic FLSA provisions than do very small plants, but a much *lower* minimum wage violation record.[74] However, as Table 4 indicates, North Carolina violations vary from this pattern. Of all investigated establishments with three or less

[65] The ratio of basic violations found to total establishments investigated varied from a low of 43% in the financial industry to a high of 78% in agriculture. On minimum wage violations, the variation was from 8% in the chemical industry to 32% in textiles. 1951 W-H ANN. REP. 58-61.

[66] 1951 W-H ANN. REP. 56-57. Wage and Hour Division statistics for the first five months of fiscal 1952 indicated a continuing trend toward high violation ratios in the deep South. Compared to 60% basic violations found nationally, the Birmingham regional office showed 81% and Dallas was next highest with 79%.

[67] 1951 W-H ANN. REP. 58.

[68] 41% in Puerto Rico. 1951 W-H ANN. REP. 57. See note 147, *infra*.

[69] 1951 W-H ANN. REP. 56-57. During the first five months of fiscal 1952, the highest rate on minimum wage violations was in the three Southern regions and North Carolina. (From Wage and Hour Division mimeographed data.)

[70] An unusually large number of farm investigations limited to child labor violations, as shown in Table 4, reduced the minimum wage ratio.

[71] From three to 30 establishments in each industrial category were investigated, making for a possibly unrepresentative sampling. However, as many as 36% of all covered establishments in certain categories were investigated.

[72] From statistical data at Wage and Hour office, Raleigh, N. C.

[73] 1951 W-H ANN. REP. 58-61. The exception was the clothing industry with the North Carolina rate considerably higher than the national figure.

[74] 1951 W-H ANN. REP. 66.

TABLE 4

FLSA Investigation Results in North Carolina, Fiscal Year 1951.*

	Number of Covered Establishments	Actual Number Investigated	Establishments Found in Violation of Basic Provisions			
			Total Violations	Minimum Wage	Overtime	Child Labor
ALL INDUSTRIES, Total	13,993	792	464	210	334	81
MANUFACTURING, Total	6,361	362	222	120	181	18
Food and tobacco	602	50	38	27	33	2
Textile, apparel, leather	1,090	117	64	41	44	2
Lumber, furniture, wood	3,559	112	66	30	57	12
Paper, printing, publ	367	10	8	7	6	1
Chemicals, rubber	190	13	6	1	4	1
Stone, clay, glass	227	8	7	1	7	0
Metal, related products	275	42	27	10	25	0
Miscellaneous	51	10	6	3	5	0
NON-MANUFACTURING, Total	7,632	430	242	90	153	63
Mining	83	22	6	2	5	2
Construction	457	22	13	5	12	0
Trade—food products	1,000	73	37	18	29	1
Trade—all except food	1,741	92	51	18	44	2
Finance, ins., real est	1,599	36	27	18	24	0
Transportation, pub. util	2,032	64	40	23	30	0
Miscellaneous	720	12	10	6	9	0
Agriculture, fisheries	.....	109	58	0	0	58
Establishments with 1 employee		16	10	5	2	3
2 or 3 employees		54	19	8	17	1
4 to 7 employees		159	83	40	57	13
8 to 19 employees		221	142	54	88	44
20 to 49 employees		166	102	46	79	14
50 to 99 employees		76	54	32	45	2
100 to 199 employees		59	34	19	28	1
200 to 499 employees		30	14	5	12	3
500 and more employees		11	6	1	6	0

*Compiled from statistical tables at Wage and Hour office, Raleigh, N. C.

employees, only 19% were violating the minimum wage provision, but 32% of all plants with 50 or more employees were doing so.

With the Administrator's right to sue for back wages, restitution improved during fiscal 1951, as shown in Table 5. Nationally, employers agreed to or were ordered to pay 60% of all back wages found due, compared to 35% in fiscal 1949.[75] But in the South, only 52% restitution was achieved, leaving in the region a continuing large proportion of discovered but unpaid liability existing. Of five states with restitution of under 50% of back wages due, four were in the South, and South Carolina, with 22%, had the lowest record in the nation.[76] In several

[75] See 1951 W-H Ann. Rep. 19.
[76] 1951 W-H Ann. Rep. 56-57.

Southern states a disproportionately low ratio of restitution has been secured for several years,[77] being indicative of the regional pattern. In North Carolina, 56% restitution was achieved in fiscal 1951. However, from other 1951 data available,[78] something of the industrial variation on restitution within the state may be shown. Thus, in these broad industrial categories, a very high degree of restitution was achieved: textile, paper, chemical, stone, metal and miscellaneous manufacturing; mining and finance. A low ratio of restitution was found in food manufacturing, construction and transportation.[79]

TABLE 5

A Comparison of Back Wages Owed and Restitution Agreed to or Ordered, Inspected Establishments Only, for the United States, the South and North Carolina, Fiscal Years 1949-1951.*

	Back Wages Owed	Restitution Agreed To	Restitution Percentage
1949			
U. S.	$12,186,957	$4,279,085	35%
South	3,281,408	1,163,032	35%
N. C.	425,931	46,401	11%
1950			
U. S.	9,559,628	4,081,193	43%
South	2,606,985	1,131,868	43%
N. C.	161,812	49,152	30%
1951			
U. S.	11,202,561	6,666,995	60%
South	3,995,135	2,075,983	52%
N. C.	281,115	158,237	56%

*Data from Appendix Tables, W-H ANN. REP., 1949-1951.

ADMINISTRATIVE ENFORCEMENT AND PRIVATE LITIGATION

In order to secure employer compliance, the FLSA provides varied means of enforcement:[80] inspection, voluntary restitution, consent decree, injunction, Administrator's suit for back wages, private employee action for double damages, and criminal prosecution. National inspection and enforcement is handled through regional offices under the Wage and Hour Division of the United States Department of Labor, but since 1940, the FLSA has been administered in North Carolina, under federal

[77] In fiscal 1949, compared to 35% restitution of back wages secured nationally, Alabama had 28%; Mississippi, 22%; North Carolina, 11%; and South Carolina, 30%. Table 5 and 1949 W-H ANN. REP. 38. In fiscal 1950, compared to 43% restitution nationally, Alabama had 23%; Mississippi, 32%; North Carolina, 30%; and South Carolina, 29%. Table 5 and 1950 W-H ANN. REP. 298.

[78] Statistical material on North Carolina restitution at the Wage and Hour office in Raleigh, N. C. Broad industrial categories, as listed in Table 4, were used.

[79] In fiscal 1949, conditions were worse: more than half the back wages owed were in the textile industry but less than 2% restitution was achieved.

[80] Sections 11, 12, 16 and 17.

standards, by the state Department of Labor,[81] a unique arrangement authorized by Section 11(b) of the Act. The procedures described below, while related to local practices, are generally uniform in the nation.

With periodic physical inspection of all covered establishments impossible,[82] inspection programs are planned,[83] both nationally and regionally, to handle several categories of investigation: complaints received[84] (usually from employees, third parties, competitors and labor unions),[85] with the highest percentage of violations always found in this category;[86] re-inspection of employers previously found in serious violation; areas or industries which consistently reveal a high percentage of violations; newly established firms or those awarded government contracts; and spot-check inspections to provide sufficient general data for continued planning of national enforcement. Occasionally, priority inspections, such as the 1951 agricultural child labor check-ups, are given precedence in the planned program.

The field investigation first determines if the establishment, as well as the individual employees, are covered by the Act, and if any exemptions apply. Plant-wide compliance with the statutory standards as to minimum wages, overtime, child labor and record-keeping[87] is checked, usually by taking transcripts from employer records and attempting

[81] See 1940 W-H ANN. REP. 103-107 for discussion of the cooperative agreement. Similar agreements were in effect for Connecticut from 1940-1943 and the District of Columbia from 1940-1945, while the current cooperative agreement with Minnesota provides for only partial state investigation. (From letter to writer from Wage and Hour Division, February 6, 1952.)

[82] This is the "ideal" type of inspection program. 1948 W-H ANN. REP. 2. However, the level of Congressional appropriations has not only made this impossible, but ever since the Act's passage has determined the tempo of the correction and elimination of unfair labor standards. See Herman, *supra* note 2, at 370-371 and 378.

[83] A highly complicated, weighted formula is used taking into account the total establishments and the previous year's violation percentages in each industry.

[84] Table 6 shows that over 4,000 complaint investigations have been completed in North Carolina. In fiscal 1943, 529 complaints were received in North Carolina, with the largest numbers coming from the lumber (89), textile (54), hosiery (43), furniture (36) and wholesale (36) industries. The rate of complaint inflow fell off in the post-war years, so that in fiscal 1948, only 143 were received. However, after the effective date of the new minimum wage, the number of complaints increased, with 322 being received in fiscal 1951. (From statistical data in Wage and Hour office, Raleigh, N. C.) The South may always have provided a large proportion of the complaints received nationally. Over one quarter of those in the early years were from the region. 1940 W-H ANN. REP. 151 and 155.

[85] In the early stages of enforcement much of the responsibility rested with labor unions. Herman, *supra* note 2, at 385. Recent charges by a North Carolina CIO official indicate that unions still play a role. Raleigh (N. C.) News & Observer, Jan. 24, 1952, §1, p. 6, col. 2.

[86] 79% of all complaint investigations reveal violations of basic FLSA provisions while other types of investigation net considerably less. Complaint investigations reveal three times as high a ratio of minimum wage violations as any other type of investigation. 1951 W-H ANN. REP. 6.

[87] The health and safety requirements of the Public Contracts Act are not enforced by Wage and Hour investigators. A recent Wage and Hour Division survey indicated an average of 31 hours of inspector's time per investigation.

to substantiate their accuracy with employee interviews. If the plant is not covered or is free of violations, the investigation ends. Although an employer may be exempt from the Act, inspection is authorized to determine coverage.[88] The power of subpoena, with specific penalties, may be used to secure records.[89]

If violations of a non-willful character are found, an informal procedure is first followed looking toward negotiation of a settlement. Only if this fails, is resort made to formal enforcement procedures. It is estimated that over 90% of violation cases never reach the litigation stage of injunction or criminal prosecution.[90] The investigator has authority to arrange settlement of back wages due for monetary violations of the minimum wage or overtime provisions. If the employer refuses such restitution, additional attempts at settlement are made,[91] failing which, a formal letter advises the employer of his liabilities under the Act.[92] Whether or not such voluntary restitution is achieved the non-willful case will receive no further administrative enforcement and only subsequent employee initiative[93] can secure the statutory wages withheld by the violating employer, if no formal enforcement procedures are instituted.[94] As indicated in Table 6, more than 15,000 North Carolina establishments have been inspected since 1940 under the FLSA, and about two million dollars in back wages secured for North Carolina employees by various administrative processes.

The formal enforcement device chiefly relied on is the injunction. An administrative variation of the injunctive relief provided[95] is the consent decree which in the early years of enforcement was widely used.[96] Usually combined with voluntary restitution paid by the employer who had been found in substantial violation, it has the same restraining efficacy as a normal equity decree.[97] Since its use in the first FLSA civil

[88] LIVENGOOD, *op. cit. supra* note 8, at 27-29.

[89] Section 9.

[90] *Hearings, supra* note 2, at 83.

[91] Attempts are made by the area supervisor and the supervising inspector at Raleigh. Each of these has a higher settlement authorization than an ordinary investigator.

[92] The letter is in the name of the Commissioner of Labor, whose action under the cooperative agreement is taken in the capacity of the federal Administrator. If an employee complainant originated the investigation, he is advised of the violation findings insofar as they affect him.

[93] The Administrator's suit and the employee's private action are both described *infra*.

[94] A case involving a potential criminal prosecution is immediately referred, without any effort at settlement, to the Joint Review Committee in Raleigh, N. C. This consists of the federal representative of the Wage and Hour Division and the representative of the Solicitor of Labor, who may recommend criminal action. If the case does not meet the criteria for a criminal prosecution, an injunction may be sought, or no action at all taken if there is assurance of future compliance.

[95] Section 17.

[96] Of 3,220 injunctions obtained in fiscal 1939-1942, 3,019 were by consent. Until 1946, the majority of injunctions obtained each year were consent decrees. 1949 W-H ANN. REP. 15.

[97] LIVENGOOD, *op. cit. supra* note 8, at 30. See 1941 W-H ANN. REP. 118 on restitution factor.

TABLE 6

Results of FLSA Inspection, and Restitution Achieved, in North Carolina, for Fiscal Years 1940-1952.*

Fiscal Year	Number of Establishments Investigated	Number of Covered Employees Therein	Number of Complaint Investigations‡	Number of Establishments Violating Basic Provisions	Restitution Agreed To or Ordered	Number of Underpaid Employees Benefiting
1940‡....	286	§	§	135	$ 45,132	1,182
1941.....	1,939	123,308	834	1,197	255,202	13,026
1942.....	3,250	298,193	1,125	2,143	710,888	26,051
1943.....	2,495	§	461	1,286	197,963	7,456
1944.....	1,341	§	320	782	225,638	9,007
1945.....	1,237	§	327	890	215,331	12,469
1946.....	920	§	188	498	201,055	5,837
1947.....	912	§	121	521	131,088	4,646
1948.....	502	§	146	299	60,680	2,237
1949.....	630	44,800	167	394	46,401	5,460¶
1950.....	383	27,951	178	218	49,152	2,338¶
1951.....	792	35,194	304	464	158,237	3,452¶
1952†....	454	25,960	§	245	§	2,158¶

*From Appendix Tables in W-H ANN. REP. for each fiscal year. Some classifications have been changed over the years so that figures are not completely accurate.
‡Only the last half of fiscal 1940 is included. No earlier figures were available.
†Only the first five months of fiscal 1952, from mimeographed data prepared by Wage and Hour Division.
‡Figures prepared for the writer by research division, Wage and Hour Division, Feb. 6, 1952.
§Not available.
¶This is the number of underpaid employees. A lesser number actually benefited.

action brought in the nation, a case arising in North Carolina,[98] an estimated 200 such consent decrees, mostly in the lumber industry, have been secured in this state.[99] However, with the proportion of consent decrees recently reduced,[100] contested injunctions are today the Act's most effective medium of enforcement. Table 7, *infra,* indicates for the fiscal years from 1941 to date, the number of injunction cases begun in the nation, the region and the state. It would seem that injunctions were used in the South in greater proportion to the rest of the nation, in earlier years than of late. During fiscal 1951, only 59 of the 460

[98] This action was brought in the Federal Court for the Eastern District of North Carolina on January 27, 1939, three months after the Act's effective date. Another early case involving the largest number of employees in one action was against the Atlantic Coast Line Railroad for violating the 25¢ per hour minimum wage in respect to some 4,400 workers. 1939 W-H ANN. REP. 61 and 63.

[99] This was the estimate of a Wage and Hour attorney who participated in securing most of the decrees.

[100] Compare with data in note 96, *supra.* Since fiscal 1946, a growing percentage of injunctions are obtained by contest. By fiscal 1949, 233 were secured after contest while only 71 were consented to. 1949 W-H ANN. REP. 15. Data supplied in a letter to the writer from the Solicitor of Labor, Feb. 21, 1952, indicate the recent trend:

Fiscal Year	By Consent	By Contest
1950	103	280
1951	170	290
1952 (first half)	50	160

TABLE 7

Civil and Criminal FLSA Cases Commenced in Federal District Courts of the United States, the South and North Carolina, Fiscal Years 1941-1952.*

	1941	1942	1943	1944	1945	1946	1947	1948	1949	1950	1951	1952‡
INJUNCTIONS												
U. S., total	1,706	1,243	579	481	435	342	235	258	361	336	509	228
South, total	521	316	173	118	105	76	57	67	77	57	98	60
North Carolina	108	35	10	12	11	3	3	2	3	3	13	2
PRIVATE ACTIONS												
U. S., total	816	1,017	827	618	597	1,075	3,482	761	277	245	250	118
South, total	517	488	202	104	76	244	315	75	53	59	97	56
North Carolina	10	32	19	5	0	3	9	2	3	3	7	6
CRIMINAL CASES												
U. S., total	†	123	61	54	89	170	136	67	79	112	123	77
South, total	†	23	12	12	11	61	59	19	23	31	28	20
North Carolina	†	7	2	0	2	1	4	0	1	1	2	1

Total Number of Actions Commenced During Entire Period, by States

	Injunctions	Private Actions	Criminal Cases
U. S., Total	6,713	10,083	1,091
South, Total	1,725	2,286	299
Alabama	167	174	27
Arkansas	81	194	21
Florida	88	164	13
Georgia	257	244	30
Kentucky	135	131	27
Louisiana	53	100	24
Mississippi	108	51	19
North Carolina	205	99	21
Oklahoma	28	190	6
South Carolina	148	73	20
Tennessee	199	320	14
Texas	136	487	46
Virginia	120	59	31

*Figures from Appendix Tables, ANN REP., ADMINISTRATIVE OFFICE OF U. S. COURTS, 1941-1951. Statistics of criminal cases, and for first half of fiscal 1952 specially prepared for writer by Mr. W. H. Speck of Administrative Office, U. S. Courts.

‡Data for first six months of fiscal 1952, to Jan. 1, 1952.

†Not available.

injunctions actually obtained in the nation were secured in the South, although this is below the usual proportion.[101] Typical of contested injunction litigation are cases involving recalcitrant employers or important problems of statutory construction.[102] Violations subsequent to

[101] From letter to writer from Solicitor of Labor, Feb. 21, 1952.

[102] In the only two reported North Carolina cases, injunctions were granted. Coverage of ice-house employees was determined in Hamlet Ice Co. v. Fleming, 127 F. 2d 165 (4th Cir.), *cert. denied,* 317 U. S. 634 (1942). In McCoomb v. Homeworkers Handicraft Cooperative, 176 F. 2d 633, 637 (4th Cir.), *cert. denied,* 338 U. S. 900 (1949), Parker, J., decried the industrial use of homeworkers at the "ridiculously low wage of from 5 to 13 cents per hour." Recently injunction was granted in Tobin v. Airlines Transportation, Inc. (M. D. N. C. Civil No. 168, 1951) where airport limousine service employees were held "engaged in commerce."

the granting of an injunction may result in penalties exceeding the most successful criminal prosecution. By combining civil and criminal contempt proceedings, fines, back wages and court costs[103] may be ordered, and jail sentence imposed.[104]

Willful violations of the statute may lead to criminal prosecution with a possible fine of up to $10,000 or imprisonment for not more than six months, or both.[105] Criminal sanctions are sparingly used and require considerable administrative review before reference to the Department of Justice.[106] From the Act's passage until January 1, 1952, there have been 1,279 criminal convictions compared with 6,788 injunctions obtained.[107] Table 7 indicates that over one quarter of the FLSA criminal prosecutions commenced in the nation were begun in the South. In fiscal 1951, 34 convictions of 123 in the nation were obtained in the South.[108] Actual jail sentences are seldom imposed but aggregate fines may greatly exceed $10,000 because each offense may constitute a separate count, and restitution is commonly ordered.[109] Where records of hours of work are altered, or receipts falsified to show restitution not actually paid, effective use has been made of the felony penalties provided under the False Information Act.[110]

By eliminating both the potential double liability of the employer and the likelihood of employee failure to sue for small amounts,[111] the Ad-

[103] See 2 LAB. L. J. 222 (1951). But in Tobin v. Alma Mills, 192 F. 2d 133 (4th Cir. 1951) a consent decree enjoining FLSA violations, originally entered in 1940, was dissolved upon defendant's application, as no future violations were presently apprehended, notwithstanding the Administrator's protest and apparent violations in the period 1946-1949.

[104] See 2 LAB. L. J. 41 (1951).

[105] Section 16(a).

[106] LIVENGOOD, *op. cit. supra* note 8, at 35. See note 94, *supra.*

[107] 1949 W-H ANN. REP. 15; data from fiscal 1950 forward, from letter to writer from Solicitor of Labor, Feb. 21, 1952.

[108] From letter to writer from Solicitor of Labor, Feb. 21, 1952.

[109] See 2 LAB. L. J. 376 (1951) for three-time violator given six months imprisonment and ordered to make restitution. Pursuant to Section 16(a), sentence of imprisonment can only be imposed after a prior conviction.

One of the largest fines collected was in the United States v. D & D Shirt Company (E. D. Pa., September 17, 1943) where in addition to jail sentences, the total fines amounted to $21,700 and restitution was approximately $35,000. In United States v. Crown Trouser Company (M. D. Pa., June 6, 1939) a fine of $46,000 was imposed but $44,000 of that amount was suspended. Larger fines imposed in recent cases in the South were in United States v. Tennessee Products Corp. (M. D. Tenn., fiscal year 1946) ($3,000); United States v. Galveston Mills (W. D. Va., fiscal year 1946) ($7,500); United States v. M. S. Baus (W. D. Ky., fiscal year 1947) ($4,000); United States v. J. T. Prine Lumber Company (N. D. Fla., fiscal year 1949) ($5,000). (Data from letter to writer from Solicitor of Labor, Feb. 21, 1952.)

Fines were imposed in two recent North Carolina cases: United States v. C. A. Brown Lumber Company, et al (E. D. N. C., No. 4947-CC, 1951) ($4,500 aggregate fines); United States v. W. D. Townsend (W. D. N. C., Criminal No. 1483, 1951) ($1,500 fine and $4,306 restitution paid, after guilty plea to 43 counts).

[110] 62 STAT. 749 (1948), 18 U. S. C. §1001 (Supp. III, 1950). Despite the decision in United States v. Moore (S. D. Fla., 1951), 2 LAB. L. J. 467 (1951), such prosecutions are still being brought. See 3 LAB. L. J. 141 (1952).

[111] Figures given in 1951 W-H ANN. REP. 19 shows that each underpaid em-

ministrator's actions for employee back wages, as authorized by the 1949 Amendments,[112] are proving an efficient enforcement weapon.[113] Table 5, *supra,* shows the improved restitution achieved in 1951 compared with earlier years. As of January 1, 1952, eighteen such suits by the Administrator had been completed, of which four were in the South, with recoveries ranging from $74 to $568.[114] Of six employee requests in North Carolina for such suits, restitution has been achieved in every case without litigation.[115]

Employees' actions to recover unpaid wages are potentially the Act's strongest enforcement device because of the double liability involved.[116] Restitution statistics indicate, as shown in Table 5, that a considerable back-log of discovered liability exists after investigations are closed. It would be necessary to increase these figures substantially in order to estimate realistically the total amount of possible liability, since inspection reaches only a small proportion of all covered establishments.[117] Such liability is lessened, however, by the two-year statute of limitations, which seriously curtails what purports to be remedial legislation.[118]

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ployee getting restitution received on the average well under $100, while the amount due the average employee whose employer refused to make restitution, was slightly over $100.

[112] Section 16(c); LIVENGOOD, *op. cit. supra* note 8, at 33. It is necessary for the employee to make written request for action to recover such illegally withheld wages.

[113] See *Hearings, supra* note 2, at 73, and Note, 28 N. C. L. REV. 428 (1950) for predictions of results. See 1951 W-H ANN. REP. 18-20 for estimates of results. See *Hearings, supra* note 2, at 211, 389 and 660, for gloomy employer prophecies ("stir up litigation," "harass or bedevil employers," "weapon of persecution") hardly borne out by the few actions brought since.

[114] From letter to writer from Solicitor of Labor, Feb. 21, 1952. Fourteen of these cases involved recoveries of less than $300.

[115] Interview with Wage and Hour official at Raleigh, N. C.

[116] Section 16(b): the unpaid wages and "an additional equal amount as liquidated damages." In Brooklyn Savings Bank v. O'Neil, 324 U. S. 697, 707 and 709 (1945), the double damage provision is said to be a right of "private-public character" and "to insure restoration of the worker to the minimum standard of well-being. Employees receiving less than the statutory minimum are not likely to have sufficient resources to maintain their well-being and efficiency until such sums are paid at a future date." See 2 LAB. L. J. 467 (1951) for allowance of interest if liquidated damages are not allowed. On employee suits generally, see Gerber and Galfand, *Employees' Suits under the Fair Labor Standards Act,* 95 U. OF PA. L. REV. 505 (1947); Wecht, *supra* note 2, *passim.*

[117] 1951 W-H ANN. REP. 3 (5% of covered establishments).

[118] The Portal-to-Portal Act instituted several limitations on employee suits including the 2-year statute of limitations. See LIVENGOOD, *op. cit. supra* note 8, at 36; Roth, *Effect of the "Good Faith" Defenses of the Portal-to-Portal Act,* 10 LAW. GUILD REV. 111 (1950). Previously, several Southern states were among those which by shortening their statutes of limitation, severely restricted employee causes of action (Alabama, reduced from 6 years to 1 year; Georgia, from 20 years to 2 years). 1946 W-H ANN. REP. 63 and 86.

The present 2-year statute of limitations is unrealistic and tends to defeat the Act's objectives. There is an inevitable lapse of time in determining whether there is a violation and several more months may pass before the employee is notified of the employer's refusal to make restitution. Other normal factors of delay are described in 1946 W-H ANN. REP. 64. The present limitation was called "totally inadequate" by the Administrator, "a far shorter period than is usually allowed

The charging of attorneys' fees and court costs have occasionally meant a substantial increase in the actual liability of the employer.[119]

State and federal courts have concurrent jurisdiction for employee suits.[120] While the volume of FLSA litigation in state trial courts cannot be determined,[121] a picture of employee suits in the federal courts since 1940 is presented in Table 7. The post-war increase due to the flood of portal-to-portal actions is clearly shown. It seems plain that while the South has a large proportion of unpaid, discovered liability,[122] there are proportionately less employee suits brought in the South than elsewhere, measured by federal court actions. The small number of FLSA private actions in North Carolina is particularly striking, and in several other states the volume of litigation contrasts sharply with the potential liability existing.[123] If the volume of appellate FLSA litigation in state courts is any barometer of trial court activity,[124] considerable variation exists within the South. Using state appellate FLSA cases, as indexed in the Southeastern Digest,[125] the total in four Southern states, as compared with federal district court litigation follows:

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the creditors of these same employees to collect money owed." *Hearings, supra* note 2, at 74.

[119] Section 16(b): in addition to any judgment, "a reasonable attorney's fee to be paid by the defendant, and costs of the action." For possible problems where the court costs ran over $10,000, see 2 LAB. L. J. 42 (1951). On attorneys' fees generally, see Gerber and Galfand, *supra* note 116, at 532.

Attorneys' fees in FLSA cases average 20%, although where the recovery is small, it may run much higher. In Morgan v. Atlantic Coast Line R.R., 32 F. Supp. 617 (S. D. Ga. 1940), recovery $156, fee $250; 2 LAB. L. J. 42 (1951), recovery $368, fee $500. A case is reported in 2 LAB. L. J. 468 (1951) where the court found that attorneys had already received more than $80,000 in fees.

[120] Hart v. Gregory, 218 N. C. 184, 10 S. E. 2d 644 (1940), Note, 19 N. C. L. REV. 251 (1941). See Crockett, *Jurisdiction of Employee Suits under the Fair Labor Standards Act*, 39 MICH. L. REV. 419 (1941).

[121] Almost no statistical sources are available. It was estimated that by 1941, over 2,500 employee suits had been instituted. Poole, *Private Litigation under the Wage and Hour Act*, 14 MISS. L. J. 157, 169 (1942).

[122] See p. 259, *supra* and Table 5.

[123] Of the 99 private FLSA actions commenced in North Carolina, 62 were brought in the Federal court for the Eastern District, and 61 were begun in fiscal 1941-1943. This corresponds somewhat with the "down-east" trend of injunctions sought, where 136 of 205 in the state were in the Eastern District. Although 8 cases were found between 1940 and 1944 in the state appellate court, none was discovered after 1944. Except for Texas and Tennessee, Table 7 seems to indicate a rather low number of employee actions. There is nothing to indicate that the few private federal actions brought in the South, especially in Mississippi, Virginia, South Carolina and North Carolina, are supplemented by a heavy volume of state court litigation. While the Southern ratio of suits brought in the most recent period is rather high, the numerical figure is low.

[124] Because state trial court actions are generally unreported, the Solicitor of Labor was unable to furnish even a rough estimate of the volume of employee actions. He did not think that appellate cases alone would validly indicate the volume, not only because of unreported cases, but also in view of dismissals after settlement, etc. (Letter to writer, Feb. 21, 1952.)

[125] Volume 5 (1951 Supp.). In the count any case which came before the appellate court more than once, was counted only once.

	Total FLSA appellate litigation, state courts	FLSA actions, federal courts, 1941-1952
Georgia	12	244
North Carolina	6	99
South Carolina	0	73
Virginia	1	59

Availability of discovery procedures may be decisive to the plaintiff's success in an FLSA action since the employer has complete records of time worked, wages paid, shipments made across state lines, etc.[126] The liberal use of discovery procedures in the federal courts may be an important factor in preferring federal over state jurisdiction.[127] A recent federal court study[128] reveals that 42% of all private FLSA actions showed some use of discovery,[129] with 33% of all the cases utilizing interrogatories.[130] On the other hand, the attitude of some state courts is reflected in a North Carolina FLSA case denying discovery because of fear of spreading "a dragnet for an adversary."[131]

FLSA litigation in the North Carolina Supreme Court began with Hart v. Gregory,[132] which established that state courts were of "competent jurisdiction" to handle wage and hour suits. Of six appellate cases in North Carolina decided on the merits, plaintiffs secured judgments in two suits and lost four.[133] A narrow construction of the statute has been utilized at times[134] but other cases[135] have adopted the more liberal

[126] Wage and hour record-keeping is required of the employer by Section 11(c).

[127] Another possible reason is the likelihood that the federal judge will have had experience with FLSA actions. Although state courts have expressed themselves as bound to apply the rules of FLSA construction used in federal jurisdictions, to what extent is it necessary to sue in federal court in order to secure this benefit? In Horton v. Wilson & Co., 223 N. C. 71, 75, 25 S. E. 2d 437, 440 (1943), it was said, "But we are dealing with a Federal Law, and it is incumbent upon us to apply the rules of construction obtaining in the Federal jurisdiction, regardless of the cliches of interpretation we might otherwise employ." For other such expressions, see Wecht, *supra* note 2, at 34 and note 84. *Compare* Hart v. Gregory, 220 N. C. 180, 16 S. E. 2d 837 (1941) *with* Amicus Curiae Memorandum, in Support of Plaintiff's Petition for Rehearing, *passim* (rehearing later denied, unreported).

[128] Speck, *Use of Discovery in United States District Courts*, 60 YALE L. J. 1132 (1951).

[129] Compare: 26% use in all cases and 7% use in FLSA injunction cases.

[130] Compare: 13% use in all cases and 4% in FLSA injunction cases.

[131] "Manifestly, plaintiff would not be entitled to examine defendant to ascertain the hours of work and the remuneration which he himself received." Washington v. Safe Bus, Inc., 219 N. C. 856, 858-859, 15 S. E. 2d 372, 373 (1941).

[132] 218 N. C. 184, 10 S. E. 2d 644 (1940).

[133] In contrast, none of the four reported federal court employee actions in the state has been completely unfavorable to the plaintiff. The count in the state court does not include Smoke Mount Industries, Inc. v. Fisher, 224 N. C. 72, 29 S. E. 2d 128 (1944), where a demurrer to an FLSA counter-claim was over-ruled on the ground that it was an action to enforce a penalty, arising on a contract.

[134] See Hart v. Gregory, 220 N. C. 180, 183, 16 S. E. 2d 837, 839 (1941) ("doing violence to the language of the Act to give it such elasticity. . . . that an ordinary night watchman came under the provisions") and note 127, *supra*. Greene v. Anchor

attitude based on the humanitarian purposes of the Act.[136] In FLSA litigation in state and federal courts of North Carolina, there have been judicial constructions of the Act relating to: executive exemptions,[137] "in commerce" and "engaged in commerce,"[138] building maintenance employees,[139] icing employees,[140] watchmen,[141] retail establishments,[142] railroad station "red caps,"[143] and homework.[144]

Mills Co., 224 N. C. 714, 719, 32 S. E. 2d 341, 344 (1944) *cert. denied,* 324 U. S. 880 (1945) (rejecting "the more enthusiastic construction").

[135] Hart v. Gregory, 218 N. C. 184, 192, 10 S. E. 2d 644, 649 (1940) (rejecting an "unjustifiably narrow interpretation of the humane" FLSA); Crompton v. Baker, 220 N. C. 52, 56, 16 S. E. 2d 471, 473 (1941) ("The sweep of the Fair Labor Standards statute is far-reaching enough to include the employment of the plaintiff").

Justice Seawell, dissenting, in Hart v. Gregory, *supra* note 134: "In excluding plaintiff from the benefit of the FLSA I believe we fail to accord to that measure the liberal construction to which all such remedial statutes are entitled. . . . in this case the ends of justice may be met and the humanity intended by the statute may be served by a judicial recognition of the principle, 'They also serve who only stand and wait.'"

In Horton v. Wilson and Co., 223 N. C. 71, 75, 25 S. E. 2d 437, 440 (1943) Justice Seawell for a unanimous court, said: "Congress has not exhausted its full power under the Commerce Clause in this legislation. . . . But it has greatly broadened the conception of interstate commerce, and extended its reach or comprehension of the instrumentalities employed, particularly on the human side, as a means of removing burdensome inequalities and as a measure of social justice to those employed, including in the Act a vast number of persons not theretofore considered in this connection, but whose exclusion would defeat the purpose of the Act."

[136] The FLSA provisions "are remedial and humanitarian in purpose. We are not here dealing with mere chattels or articles of trade but with the rights of those who toil, of those who sacrifice a full measure of their freedom and talents to the use and profit of others. Those are the rights that Congress has specially legislated to protect. Such a statute must not be interpreted or applied in a narrow, grudging manner." Justice Murphy in Tennessee Coal, Iron and Railroad Co. v. Muscoda Local, 321 U. S. 590, 597 (1944).

[137] Morton v. White Park Mills Co., 223 N. C. 860, 27 S. E. 2d 448 (1943). "Perhaps we might have some concepts of a more expansive nature as to what an 'executive' is or ought to be—of degree and importance, since we have come to associate that term with 'big business' and worthwhile compensation. If the Administrator, official definer and delimiter of the term, had similar views, he failed to capture them within the web of his thesis." Pye v. Atlantic Co., 223 N. C. 92, 96, 25 S. E. 2d 401, 404 (1943).

[138] Bennett v. V. P. Loftis Co., 167 F. 2d 286 (4th Cir. 1948) (no "narrow, strained and technical interpretation of the Act"); Davis v. Goodman Lumber Co., 133 F. 2d 52 (4th Cir. 1943); Horton v. Wilson & Co., 223 N. C. 71, 25 S. E. 2d 437 (1943).

[139] Greene v. Anchor Mills Co., 224 N. C. 714, 32 S. E. 2d 341 (1944), *cert. denied,* 324 U. S. 880 (1945).

[140] Hamlet Ice Co. v. Fleming, 127 F. 2d 165 (4th Cir.), *cert. denied,* 317 U. S. 634 (1942).

[141] Bennett v. V. P. Loftis Co., 167 F. 2d 286 (4th Cir. 1948); Craige v. Heide & Co., Inc., 94 F. Supp. 442 (E. D. N. C. 1951); Hart v. Gregory, 220 N. C. 180, 16 S. E. 2d 837 (1941).

[142] Davis v. Goodman Lumber Co., 133 F. 2d 52 (4th Cir. 1943).

[143] Southern Ry. v. Black, 127 F. 2d 280 (4th Cir. 1942).

[144] McComb v. Homeworkers Handicraft Cooperative, 176 F. 2d 633 (4th Cir.), *cert. denied,* 338 U. S. 900 (1949). The court here refused to apply the law of independent contractors to "humble employees of this sort," nor would it "open the door to the return of the sweatshop system of unpleasant memory." It emphasized: "The Act's purpose as to wages was to insure that every person whose employment contemplated compensation should not be compelled to sell his services for less than the prescribed minimum wage."

CONCLUSIONS

In the South, the FLSA, by the very nature of its regulatory effort, confronts special problems. The region has been historically the lowest wage area in the nation,[145] and the FLSA has not basically altered wage differentials in most industries.[146] A predominantly agricultural sec-

[145] *Regional Wage Differentials,* 63 MONTHLY LAB. REV. 511-525 (1946). But see Lester, *Diversity in North-South Wage Differentials and in Wage Rates within the South,* 12 So. ECON. J. 238 (1946), and articles described in DeVyver, *supra* note 9, at 190 and notes 4-6. In Bloch, *Regional Wage Differentials: 1907-1946,* 66 MONTHLY LAB. REV. 371, 373 (1948), it is noted that "over the 40 years covered by this study the relative wage position of the South showed no progressive improvement that might be attributed to long-term forces. . . . Notwithstanding gains in recent years, the percentage gap between manufacturing job rates in the South and in other regions was as wide in 1945-46 as in 1919. In relation to the industrially dominant Northeast and Northwest, the wage position of the South was the same at the end as at the beginning of the 40 years."

[146] See 63 MONTHLY LAB. REV. 499 (1946). In Bloch, *supra* note 145, at 374: "Because of the relatively low wages paid in the South, this region was undoubtedly affected to a greater proportionate extent than others by the NRA codes, the Fair Labor Standards Act, and other Federal wage legislation. . . ."

Very recent wage studies reveal the present extent of the Southern wage differential in particular industries and occupations. The median rate for flour-milling workers in North Carolina is 75¢ per hour, compared to a national rate of $1.23. While 80% of North Carolina workers make under 85¢ per hour, on the West Coast less than 1% are so paid. Conversely, 3% of North Carolina workers receive $1.40 or more per hour, compared to 87% on the West Coast. 72 MONTHLY LAB. REV. 163 (1951). Fertilizer workers in the Southeast average 80¢ per hour compared to $1.22 in the Great Lakes region. Of all fertilizer workers, 92% in the Southeast earn under 95¢ per hour, but less than 3% are so paid in the Great Lakes area. 72 MONTHLY LAB. REV. 33 (1951). The median wage rate in the cane sugar refining industry is: South, 96¢ rest of nation, $1.34. Less than 1% of the workers outside the South make under $1.10 per hour, but 93% of those in the South receive such pay. 73 MONTHLY LAB. REV. 46 (1951). The average gas utilities worker in the Southeast earns $1.18 per hour compared to $1.47 nationally. However, 38% of such workers in the Southeast earn under $1.00 while in no region outside the South do more than 4% earn so little. 72 MONTHLY LAB REV. 668 (1951). In Virginia-North Carolina woolen mills, particular jobs pay considerably less than in such mills in Rhode Island: the average hourly pay respectively for card-stripper, 97¢ and $1.42; loom fixer, $1.28 and $1.70; weaver, $1.12 and $1.55. 71 MONTHLY LAB. REV. 464 (1950). In sawmills and planing mills, the differential between Southern and Western average hourly wages is very large: 99¢ as against $2.02. 74 MONTHLY LAB. REV. 223 (1952). Comparing average hourly earnings on certain jobs as between Atlanta and San Francisco show respectively: janitor, 91¢ and $1.38; auto greaser, 93¢ and $1.63; laundry finisher, 39¢ and 99¢; and laundry wrapper, 45¢ and $1.20. 73 MONTHLY LAB. REV. 536 and 575 (1951). In ferrous foundries, average hourly earnings as between Birmingham and Detroit varied respectively for coremaker, $1.32 and $2.07; clipper, $1.00 and $1.84; floor molder, $1.33 and $2.02. 73 MONTHLY LAB. REV. 702 (1951). In wood furniture manufacturing, average earnings range considerably, from Martinsville, Va. to Los Angeles: for all workers, 95¢ and $1.42; sprayers, $1.00 and $1.64; shaper operator, $1.10 and $1.70; women workers, 79¢ and $1.38. 72 MONTHLY LAB. REV. 398 (1951). See differential data in note 150, *infra.*

Such comparisons based on average hourly earnings do not take account of many of the fringe benefits common to collective bargaining contracts, and which result in further widening the actual differentials. Especially may this be true in relation to the work-loads borne by employees. See Wall Street Journal, Feb. 4, 1952, p. 2, col. 2; America's Textile Reporter, Dec. 27, 1951, p. 35; Nov. 15, 1951, p. 13. In DeVyver, *supra* note 9, at 195 *et seq.,* an analysis is made of many non-wage, lowered labor cost factors in the South, especially those involving lesser social or labor legislative protection for workers.

tion, the South mainly manufactures non-durable goods, in which wage scales are usually below those in durable goods manufacturing.[147] Negroes, comprising a large section of the working population, are generally employed in low-wage industries and occupations.[148] In several manufacturing industries, women workers, traditionally lower paid than men, predominate.[149] Trade union organization in the South is weak and in many industries ineffective, leaving the bulk of employees without collective bargaining protection.[150] Child labor employment persists.[151] Rural workers comprise a major portion of the working force.[152] Many of the exemptions to the Act's coverage reflect both political compromises and specific concessions to particular sections of Southern industry, characterized by low labor standards.[153] Dominant public attitudes in the

[147] "Fully 75 per cent of our manufacturing employment is concentrated in the non-durable goods industries, in which wages traditionally are lower than in heavy industries. . . ." 1950 BIENNIAL REP., N. C. DEP'T OF LAB. 10. See 63 MONTHLY LAB. REV. 483 (1946). See Joelson, *Wage Making in Puerto Rico,* 2 LAB. L. J. 767 (1951) for some of the problems in an underdeveloped colonial area. Colonial aspects of Southern industry and wages have been noted. MEZERIK, REVOLT OF THE SOUTH AND WEST 56 and 58 (1946); Van Sickle, *supra* note 2, at 291.

[148] Negroes comprise a substantial portion of the labor force. 63 MONTHLY LAB. REV. 490 (1946). A study of 1949 family spending in Memphis showed that 24% of white families compared to 74% of Negro families had incomes of under $3,000. Only 4% of Negro families had incomes of over $5,000 compared with 31% of white families. 72 MONTHLY LAB. REV. 655, 658 (1951). During 1950, the average wage paid non-salaried, industrial workers in South Carolina was: white man, $2,499; Negro man, $1,660; white woman, $1,982; Negro woman, $1,178. 1950 ANN. REP. S. C. DEP'T OF LAB. 59. Industry-wise, the picture is equally revealing. The two low-wage industries are fertilizer and cotton oil mills, with respective Negro employment of 80% and 87%. The textile and electrical industries pay "high" wages, and have respectively 5% and 23% Negro employment. 1950 ANN. REP., S. C. DEP'T OF LAB. 61-65. See notes 24 and 146, *supra,* and note 160, *infra.*

[149] Women comprise two-thirds of seamless hosiery employment with wages concentrated in the lower brackets. 72 MONTHLY LAB. REV. 674 (1951). For wood furniture, see 72 MONTHLY LAB. REV. 672 (1951). In North Carolina, 36% of the 432,000 factory workers were women, with 105,000 in textile, 18,300 in tobacco and 11,900 in apparel. Only 11% of durable goods manufacturing industries used women while 44% of the non-durable goods industries did. 18 N. C. LAB. & IND. 1 (Mar., 1951). See notes 146 and 148, *supra.*

[150] See Note, 29 N. C. L. REV. 81, 83 (1950); 63 MONTHLY LAB. REV. 555-582 (1946); U. S. News & World Report, Feb. 22, 1952, p. 60.

Studies of union wage scales as of 1951 indicate the existence of the Southern wage differential even after collective bargaining has been long established. See 74 MONTHLY LAB. REV. 158, 159 (1952) for the 10¢ differential in the basic iron and steel industry. In the building trades, union scales for laborers range from 90¢ per hour in Charleston, S. C. to $2.33 in Newark, N. J. 74 MONTHLY LAB. REV. 22 (1952). In local city trucking, the average union wage for drivers and helpers is more than 40¢ per hour below the national average. The scale for drivers ranges from a low of $1.01 in Charlotte, N. C. to $1.95 in Oakland, Calif., and for helpers from 81¢ in Jacksonville, Fla. to $1.85 in Oakland. 74 MONTHLY LAB. REV. 167 (1952). In the Southeast, the average union wage in the baking industry is 34¢ per hour below the national average and 52¢ below that in the Pacific region. The scale for a pie and pastry baker in the Southeast is 85¢ per hour compared to

[151] See p. 256 and note 59, *supra.*

[152] 63 MONTHLY LAB. REV. 491 and 509 (1946).

[153] See *Hearings, supra* note 2, at 658 ff, 711 ff and 717 ff.

region not only fail to demand vigorous enforcement but even exhibit open rejection of the Act's objectives.[154]

The continuing impact of the FLSA upon the South reveals these regional patterns: Minimum wage and child labor violations run at a much higher incidence than in the rest of the nation.[155] Often a Southern state with relatively few covered employees, leads the entire country in particular violation categories.[156] Each violation in the South affects more employees on the average, than one in the North.[157] In particular industries, Southern violations often run at an extremely high rate.[158] While restitution in the South is somewhat below the national average, particular states reveal an unusually low ratio of restitution achieved.[159] Unorganized workers in general, and Negro and women workers in particular, seem to bear the major burden of these regional discrepancies.[160]

[154] Senator E. D. Smith of South Carolina said that it only took 50 cents a day to live reasonably and comfortably in his state [in 1937]. N. Y. Times, July 31, 1937, p. 1, col. 4. In *Hearings, supra* note 2, at 220, some of the attitudes are described. In Van Sickle, *supra* note 2, at 287-293, is presented a scholarly attack on the FLSA in the South, and "the misguided humanitarianism which animates so many of the supporters of the FLSA." "The FLSA is directed against the industrially emerging South. . . ." "Until the passage of the FLSA the prospects for the South were bright. Industrialization had been going on at a reasonably satisfactory rate for several decades." "A high and uniform minimum wage in a country like the United States is unsound socially, economically and politically." Also see note 32, *supra;* Van Sickle, *The Southeast: A Case Study in Delayed Industrialization,* 41 AM. ECON. REV. 384 (1951) (attack upon a "magic formula" forcing upon the South higher wage "standards they cannot now afford").

[155] See p. 256 and notes 59, 61, 68 and 69, *supra.*

[156] See notes 59, 61, 66, and 69, *supra.*

[157] This seems to be indicated by the statistics in Table 3. If the total number of underpaid employees is divided by the number of establishments in violation of basic provisions, the figure resulting for the South each year is larger than that for the nation.

[158] See p. 258, *supra,* where violations were indicated for North Carolina industries in relation to the nation.

[159] See p. 259 and note 77, *supra.*

[160] The low degree of union organization is especially marked in the lumber, apparel, hosiery, food, furniture and trade industries of the South wherein the bulk of violations occur. See note 150, *supra* and Table 4. Almost half of all FLSA covered employees "are not organized and are not familiar with their rights under various laws." *Hearings, supra* note 2, at 74.

While racial discrimination in wages is almost implicit in the job structure of the South, it is only recently that the outward indicia of such industrial practices have been abolished. See *In re* Southport Petroleum Co., 6 War Lab. Rep. 714 (1943) wherein the National War Labor Board, in an opinion by Dr. Frank P. Graham, struck down separate pay classifications for "colored laborer" and "white laborer." Held: the "sound American principle of equal pay for equal work" prevailed over "economic and political discrimination on account of race or creed [which] is in line with the Nazi program." A Negro spokesman has estimated that 150,000 colored workers in seasonal industries are exempted from the Act while "large sections of the colored population are left out in the actual administration." *Hearings, supra* note 2, at 228-229. The Birmingham regional office supervising the area with the largest Negro population in the nation, would probably show distinguishing statistics over the years. See notes 61, 66, 69, 77 and 148, *supra.*

The special wage position of women workers in the seamless hosiery, wood furniture and apparel industries is indicated in 72 MONTHLY LAB. REV. 672, 674 (1951); 73 MONTHLY LAB. REV. 166 (1951). See notes 146, 148 and 149, *supra.*

Enforcement policy does not show any particular awareness of these special regional problems. Thus, in recent years,[161] the number of covered employees reached annually by inspection,[162] and the number of injunctions and criminal prosecutions sought[163] in the South, hardly match the disproportionate volume of violations found in the region. To what extent enforcement emphasis is related at least indirectly to Congressional pressures[164] is unknown, although inadequate appropriations have been a continuing, serious limitation on necessary staff.[165] The present wage stabilization program may have a tendency to freeze sub-standard Southern wage patterns.[166]

In respect to private litigation, the picture is worse. The regional volume of employee suits[167] seems to be lower than elsewhere despite the more numerous discovered violations. In a municipal court of one section of New York City alone, there was recently more pending private FLSA litigation[168] than had been commenced in the federal courts of 13 Southern states during the past four years![169] The facilities for legal aid available to low-income groups in the South are the poorest in the nation.[170] The typically unorganized employee in the region is probably "hesitant to start a suit against his employer while he is working for him, for fear that the result of the suit may be not merely the collection of a few dollars in back wages, but also a discharge."[171]

[161] Table 7 indicates a much larger proportion of injunctions sought in the South during the early years of enforcement than of late.

[162] See p. 256, *supra,* and Table 3.

[163] See p. 263, *supra,* and Table 7.

[164] Such pressures have been noted. See Herman, *supra* note 2, at 368; *Hearings, supra* note 2, at 736; Congressional Record, October 18, 1949, pp. 15129ff. Congressman Barden (North Carolina) declared: "If there is a man in this House who has had more differences with the wage-hour set-up than I have had I would like to know it. . . . but let me say that I believe the Wage-Hour Administration at this time is very definitely a vast improvement over what it has been for the last ten years. They are taking a more reasonable attitude."

[165] See note 82, *supra.* Further details are in 1943 W-H ANN. REP. 3.

[166] A Wage and Hour official has emphasized the disadvantages of a wage freeze for "poorly paid Southern labor." Raleigh News & Observer, Dec. 5, 1951, §2, p. 26, col. 3.

[167] See p. 267 and note 123, *supra,* and Table 7.

[168] 2 LAB. L. J. 467 (1951).

[169] See Table 7.

[170] See BROWNELL, LEGAL AID IN THE UNITED STATES 170-172 and 260-273 (1951).

[171] 1946 W-H ANN. REP. 64. "The principal reasons for this are the strong reluctance of an employee to sue his current employer, or to engage in a lawsuit with attendant expenses and risks, the lack of cohesion in employees to sue in a group, and the possible dangers to employment tenure, promotion and the like from suing individually." 1948 W-H ANN. REP. 154. See note 118, *supra.* In Walling v. Bank of Waynesboro, 61 F. Supp. 384, 386 (S. D. Ga. 1945), the court noted that the $7 per week Negro janitor in his testimony "stressed the fact that he was satisfied with the terms of his employment and had no complaint to make whatsoever." Crockett, *Reinstatement of Employees under the Fair Labor Standards Act,* 42 MICH. L. REV. 25 (1943), describes the discriminatory discharge problem in detail.

The United States Supreme Court has recognized that the FLSA was intended to aid "the unprotected, unorganized and lowest paid of the nation's working population" and specifically those "who lacked sufficient bargaining power to secure for themselves a minimum subsistence wage."[172] Today, fair labor standard violations, especially those of the minimum wage and child labor provisions, continue to make costly inroads on national health and well-being. Perhaps a greater knowledge by the local bar of FLSA policy, provisions and procedure may aid a more vigorous administrative enforcement in securing for many Southern employees the minimum federal standards of which they have so often been deprived.

[172] Brooklyn Savings Bank v. O'Neil, 324 U. S. 697, 706 (1945).