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ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length."

Laws 1955 does not purport to amend the earlier 1927 and 1933 acts. Laws 1955, however, does deal with the same subject matter as Laws 1927 and Laws 1933. The question which may be raised is as follows: Is the 1955 act: (1) valid as an act which supplements the 1927 and 1933 acts, or (2) invalid as an amendment of the 1927 and 1933 acts which fails to meet the requirements of Article 2, Section 37 of the state constitution? This is the same problem involved in *Naccarato v. Sullivan, supra,* and the many cases cited therein. If the 1955 act runs afoul of Article 2, Section 37 because it is an amendatory act, rather than a supplementary act, the effect would be to invalidate the 1955 act and to leave the 1927 and 1933 acts unchanged. If this were the case, the provisions of the 1927 and 1933 acts would always have been operative, and as far as the judicial positions are concerned, the effect would be the same as that attained by a valid amendment of the 1955 act by the 1959 act. Consequently, it appears that whether the 1955 act is construed to be: (1) an invalid attempt to amend the 1927 and 1933 acts, or (2) an act which supplements the 1927 and 1933 acts, the policy of the 1927 and 1933 acts is now in effect, insofar as the two types of judicial offices are concerned.

ALFRED HARSCH

LABOR LAW

Washington Minimum Wage and Hour Act. Of great interest to Washington lawyers and their clients is the new Washington Minimum Wage and Hour Act, Chapter 294 of Session Laws of 1959. The act establishes a minimum wage of $1.00 an hour and requires the payment of overtime pay at one and one half times the regular rate of pay for all work in excess of eight hours a day or forty hours a week. It is a statute of general applicability and hence has a much broader coverage than previous Washington legislation on the subject, which touched upon only specialized problems such as the employment of women[1] or employment on public contracts.[2] The importance of the law to employers whose employment practices were already governed by the federal Fair Labor Standards Act is diminished by a proviso that for such employers compliance with the federal statute shall be deemed

[1] RCW 49.12.010 *et seq.;* RCW 49.28.070.
[2] RCW 49.28.010-060.

to constitute compliance with the crucial sections of the state act.[3] Such employers must, of course, be engaged in interstate commerce or in the production of goods for interstate commerce.[4]

While not identical, the Washington act is obviously patterned after the federal Fair Labor Standards Act, containing many provisions taken directly from that act[5] and others which are adaptations of its provisions.[6] In one very important matter, however, the Washington act departs from the pattern of the Fair Labor Standards Act. Whereas the federal act requires the payment of overtime at time and one half the regular rate of pay only for work in excess of forty hours a week,[7] the Washington act requires payment of overtime at time and one half the regular rate of pay for work in excess of eight hours a day *or* forty hours a week, and entitles the employee to overtime pay computed on whichever basis produces a greater wage.[8] In this respect the Washington act follows the pattern established under the federal Walsh-Healey Public Contracts Act.[9]

Numerous and important exemptions from the coverage of the Washington act have been made in the definition of employee.[10] Thus the act does not apply to most individuals employed on a farm and

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[3] Wash. Sess. Laws 1959, c. 294, § 12.

[4] 52 STAT. 1060 (1938), 29 U.S.C. §§ 206, 207, 212 (1952).

[5] The following sections of the Washington Act appear to have been taken directly from the indicated sections of the Fair Labor Standards Act:

Wash. Sess. Laws 1959, c. 294:	Fair Labor Standards Act:
Section 1(3) [defining "employ"]	52 STAT. 1060 (1938), 29 U.S.C. § 203(g) (1952)
Section 3(3), (4), (5) and (6) [defining "regular rate"]	63 STAT. 913 (1949), 29 U.S.C. § 207 (1952)
Section 4 [Conferring powers on the director with respect to inspections, records, etc.]	52 STAT. 1066 (1938), 29 U.S.C. § 211 (1952)
Section 6 [Conferring powers on the director to issue regulations relating to learners, apprentices, etc.]	52 STAT. 1068 (1938), 29 U.S.C. § 214 (1952)

[6] The following sections of the Washington Act appear to be based in large part upon the indicated sections of the Fair Labor Standards Act:

Wash. Sess. Laws 1959, c. 294:	Fair Labor Standards Act:
Section 1(4) [defining "employer"]	52 STAT. 1060 (1938), 29 U.S.C. § 203(d) (1952)
Section 1(5)(c) [Exempting bona fide executive, administrative, and professional employees, and outside salesmen.]	63 STAT. 917 (1949), 29 U.S.C. § 213(a)(1) (1952)
Section 1(5)(f) [Exempting newspaper vendors.]	63 STAT. 917 (1949), 29 U.S.C. § 213(d) (1952)
Section 3(2)(a) [Exempting certain canning operations.]	52 STAT. 1063 (1938), 29 U.S.C. § 207(b)(3) (1952)

[7] 63 STAT. 912 (1949), 29 U.S.C. § 207 (1952).

[8] Wash. Sess. Laws 1959, c. 294, § 3(1).

[9] 49 STAT. 2036 (1936), 41 U.S.C. §§ 35-45; Part 201.103, General Regulations, Division of Public Contracts, Department of Labor, 41 C.F.R. 201.103.

[10] Wash. Sess. Laws 1959, c. 294, § 1(5).

engaged in agricultural activities.[11] Likewise exempt are employees engaged in preparing or delivering agricultural commodities to storage or to market.[12] The specific exemption of individuals employed by the United States is of significance with respect to the yet unanswered question of the applicability of the act to state, county, and municipal employees.[13] Another specific exemption of individuals employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesman is one taken from the federal Fair Labor Standards Act.[14] Other specific exemptions cover domestic service in private homes, gratuitous services to charities, the employment of newspaper carriers and vendors, employment by certain carriers regulated by the Interstate Commerce Commission, forest protection and fire prevention activities, and employment by funeral directors or operators of emergency ambulance services.[15]

Authority to issue regulations is given to the Director of Labor and Industries by two sections, which contain somewhat overlapping delegations of power. One of these has its source in a comparable provision in the federal Fair Labor Standards Act.[16] The other, which is broader in scope, authorizes the director to make and revise such administrative regulations, including definitions of terms, as he may deem appropriate to carry out the purposes of the act.[17] It is this section which, as will be discussed later, has already been declared unconstitutional.

Prior to the issuance or modification of any regulation the director is required to call a public hearing. In this particularly ineptly drafted section, provision is made for judicial review of the regulations thereby

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[11] Wash. Sess. Laws 1959, c. 294, § 1(5)(a)(i).

[12] Wash. Sess. Laws 1959, c. 294, § 1(5)(a)(ii).

[13] Wash. Sess. Laws 1959, c. 294, § 1(5)(d). Likewise of significance is the fact that the definition of "employer" in section 3(d) of the Fair Labor Standards Act, 52 STAT. 1060 (1938), 29 U.S.C. § 203(d) (1952), from which the definition of employer in the Washington act appears to have been drawn, contains a specific exclusion of states and political subdivisions. The intention of the draftsmen, if not of the legislature, would thus appear to have been to extend the coverage of the act to state, county, and municipal employees. A recent opinion of the Attorney General holds the act applicable to county employees. 59-60 OPS. ATT'Y GEN. 41 (1959).

[14] As mentioned above, Section 1(5)(c) of the Washington act appears to have been taken from Section 13(a)(1) of the Fair Labor Standards Act, 52 STAT. 1067 (1938), 29 U.S.C. § 213(a)(1) (1952).

[15] Sections 1(5)(b), (e), (f), (g), (h), and (i).

[16] Section 6 of the Washington act was taken from Section 14 of the Federal Fair Labor Standards Act, 52 STAT. 1067 (1938), 29 U.S.C. § 214 (1952).

[17] Wash. Sess. Laws, 1959, c. 294, § 5. A comparable delegation to that made by a portion of Section 5 of the Washington act for regulations relating to permitted charges for board, lodging, apparel, or other facilities or services customarily furnished by employers to employees may be found in Section 3(m) of the Fair Labor Standards Act, 52 STAT. 1061 (1938), 29 U.S.C. § 203(m) (1952).

formulated.[18] The provision made would be more appropriate for review of a decision made by an agency exercising quasi-judicial powers in a contested case and is certainly inappropriate for review of rule-making activity conducted under a delegation of legislative authority. Although there is no requirement that a record be compiled in the hearings held by the director prior to issuance of regulations, the review provision renders the "findings" of the director conclusive upon the court if supported by substantial evidence, thus suggesting some sort of record review of a proceeding in which findings of fact and conclusions of law are made. In short, the same legislature which adopted the Administrative Procedures Act discussed in this issue has also provided a demonstration of the necessity that subsequent legislation establishing administrative procedures adopt by reference the governing provisions of that act.[19]

Enforcement of the act will be obtained both through criminal penalties and civil remedies. Violations of the provisions of the act or regulations issued pursuant thereto are gross misdemeanors.[20] Any employer who pays an employee less than the required wages is liable to that employee for the deficiency and for such reasonable attorney's fees as the court shall allow. Or, the employee may assign his claim to the director who is empowered to bring an action to collect the claim.[21] Enforcement action is facilitated by the requirement that employers maintain and make available for inspection records for each employee of the hours worked, the rates of pay applicable, and the total wages paid upon penalty of conviction of a gross misdemeanor for failure to do so.[22]

As mentioned above, the act contains a proviso that for employers subject to the federal Fair Labor Standards Act compliance with the terms of that act shall be deemed to constitute compliance with the state act.[23] In this deceptively simple formula lurk extremely difficult

[18] Wash. Sess. Laws 1959, c. 294, § 8.

[19] It appears unlikely that the legislature made a considered determination that the Administrative Procedures Act should not be applicable to proceedings under the Minimum Wage and Hour Law. On the other hand, enactment of the Administrative Procedures Act does show a considered determination that all administrative proceedings should be governed by that Act. This drafting oversight, by the same session of the legislature which enacted the Administrative Procedures Act and presumably still approved of its provisions, demonstrates the necessity, if that act is to have its desired effect, of requiring a clear showing of a legislative intent to exempt subsequent legislation from the coverage of the Administrative Procedures Act. *Cf.* Wong Yang Sung v. McGrath, 339 U.S. 33 (1950).

[20] Wash. Sess. Laws 1959, c. 294, § 10(1).

[21] Wash. Sess. Laws 1959, c. 294, § 9(1), (2).

[22] Wash. Sess. Laws 1959, c. 294, §§ 7, 10(1).

[23] Wash. Sess. Laws 1959, c. 294, § 12.

questions. For example, the federal Fair Labor Standards Act contains a number of exemptions from the minimum wage and maximum hour provisions of that act.[24] Does qualification for such exemptions constitute compliance with that act? If not, does compliance with the child labor provisions of the federal act[25] constitute compliance for the purposes of the state act?

The answer to these questions would seem to depend upon what purpose the proviso was designed to serve. If its purpose was to maintain the competitive position of Washington employers in interstate commerce with respect to employers in other states, exemption from the Fair Labor Standards Act should suffice as compliance with the Washington act. If its purpose was to relieve employers from a possible necessity of maintaining two sets of records and making determinations of what is the regular rate of pay and computing overtime pay in two ways to ensure compliance with both statutes, exemption from the wage and maximum hour provisions of the Fair Labor Standards Act should not constitute compliance with the comparable provision of the state act, nor should compliance with the child labor provisions of the federal act, which have no parallel in the state act, constitute compliance for the purpose of the state act.

Since compliance is deemed to exist for only certain sections of the state act relating to overtime pay and record keeping, it would seem that the purpose of the proviso was to avoid overlapping or duplicate regulation. Accordingly, the compliance required should be compliance with (and not exemption from) the comparable provisions of the federal act. Such a reading comes closest to obtaining what would seem to be a basic and general legislative purpose of obtaining overtime pay for all work in excess of eight hours a day or forty hours a week. It is also in accord with the construction usually given a proviso. The possibility that some employer exempt from the overtime provisions of the federal act may thereby be required to pay overtime rates under the state act causes no conflict with the paramount federal law because of the provision in the federal act preserving the effectiveness of state laws establishing higher labor standards than those required by the federal act.[26] This construction also is to be favored, in accordance with the usual standards of statutory construction, because it mini-

[24] 52 STAT. 1067 (1938), as amended 29 U.S.C. § 212 (1952).
[25] 52 STAT. 1067 (1938), as amended 29 U.S.C. § 212 (1952).
[26] 52 STAT. 1069 (1938), 29 U.S.C. § 218 (1952).

mizes the doubts of the constitutional validity of the statute as one denying equal protection of the laws.[27]

As mentioned above, certain portions of the act have been declared unconstitutional by the superior court of Thurston County,[28] and as this article goes to press the case is pending upon appeal in the supreme court. One of the provisions of the act declared unconstitutional by the superior court was the section requiring the payment for work in excess of eight hours a day or forty hours a week at one and one half times the regular rate of pay. The basis for this ruling apparently was the lack of a demonstrated relationship between the health and welfare of employees, or any other legitimate objective of the state's police power, and the requirement of overtime pay computed on whichever basis is more favorable to the employee concerned. Likewise struck down was the broad delegation of power to the director to issue regulations to carry out the purposes of the act and to prevent circumvention or evasion thereof. The minimum wage requirement of $1.00 an hour was preserved, however.

This legislative survey presents neither the space nor the proper occasion for detailed analysis of the constitutional problem presented. It is clear, however, that the argument to sustain the constitutionalities of the act is much weakened by the failure of the draftsmen to include in the act a statement of legislative findings or a declaration of legislative policy. While the provision authorizing computation of overtime pay on either a daily or weekly basis, whichever is more favorable to the employee, does smack of political origin it is not inconceivable that it is also based upon legitimate objectives of legislative concern under the police power. No constitutional argument would seem to require a legislative determination that *either* work in excess of eight hours a day *or* forty hours a week was undesirable in the present state of our society for the employee and the family to whose support he contributes. It may well be that both are undesirable. Nor would it seem that any constitutional doctrine requires such rigidity and single-mindedness on the part of the legislature in combating excessive hours of work that it must unconditionally prohibit such employment. Concern for exceptional but legitimate economic problems of employers

[27] It avoids the gross disparity which might occur if an employer subject to the federal Fair Labor Standards Act were not required to pay overtime because of an exemption in the federal act whereas a smaller local employer, not subject to the federal act, but engaged in the same activity, were required to do so, because of the lack of an identical exemption in the state act.

[28] Kaufmann Buick Co. v. Hagin (Superior Ct., Thurston County), Seattle Post Intelligencer, June 18, 1959, page 1, col. 3; Seattle Times, June 18, 1959, page 2, col. 1.

and the attempt to strike a balance between the employers' (and society's) interest in freedom to schedule unusual operations and protection of the employees' welfare may well lead to a solution in which excessive hours of work are discouraged, but not flatly prohibited, by a requirement for overtime pay. The discouragement is, of course, made more effective by the alternative methods of computation.

The broad delegation of power to issue regulations made by section 5 of the act suffers even more from the lack of a statement of legislative findings or a declaration of legislative policy. Without some such guides, the delegation of power at least comes dangerously close to what the superior court concluded was a delegation without the requisite standards for guidance.[29] It may be, however, that even this provision can be salvaged on the theory that the experience accumulated under the federal Fair Labor Standards Act and other state statutes provides a background sustaining a delegation which would be invalid in uncharted fields.[30]

Another, and substantial constitutional question is whether the act is invalid as a denial to regulated employers of equal protection of the laws. Such a question has not been directly decided with respect to the federal Fair Labor Standards Act because of the absence of an express equal protection clause applicable to federal legislation.[31] Thus some doubt is cast upon the value of cases sustaining the constitutionality of the federal act as precedents for this question under the state act. However, the validity of the classification of covered and exempt employees under the federal act has been passed upon by the Supreme Court in the context of a due process question,[32] and a more recent case informs us that, at least for some purposes, the test of due

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[29] See Trautman, *Administrative Law Problems of Delegation and Implementation in Washington*, 33 WASH. L. REV. 33 (1958).

[30] *Cf.* Fahey v. Mallonee, 332 U.S. 245, 250-253 (1947). This argument would appear to be strengthened by the fact that the Washington act is based in large part upon the federal act, making the regulatory scheme established under that act particularly relevant.

The regulations which the Administrator of the Wage and Hour Division has issued under the express delegations of authority made to him by the Fair Labor Standards Act are, as might be expected, quite voluminous. They cover more than 165 pages of the *Code of Federal Regulations*, 29 C.F.R. 511.1 *et seq.* (Cum Pocket Supp.) See 29 U.S.C.A. App. § 516.1, *et seq.* In addition, the Administrator has issued voluminous interpretative statements of policy, which do not purport to have the authority of regulations, and these statements cover more than an additional 150 pages of the *Code of Federal Regulations*, 29 C.F.R. 776.0, *et seq.* (Cum. Pocket Supp.). See 29 U.S.C.A. App. § 776.0, *et seq.*

[31] See, *e.g.*, Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186, 193, n. 9 (1946).

[32] Oklahoma Press Publishing Co. v. Walling, *supra*, n. 31.

process incorporates the concept of equal protection of the laws.[33] Again, the absence of legislative findings or a statement of legislative policy is harmful to the validity of the act. Without it, one may assume that the same considerations which led to exemptions under the federal act were considered controlling under the state act. But this gives no explanation for those exemptions in the state act which are not paralleled in the federal act. Also left for speculation is the effect of the proviso rendering compliance with the federal act compliance with certain crucial provisions of the state act. As mentioned above, the purpose may have been to relieve employers from the burdens of duplicate record keeping and duplicate pay computations. Or, it may have been to preserve the interstate competitive position of Washington employers. In either event, the substantial question remains whether such a consideration renders classification on that basis reasonable for the purposes of the test of equal protection of the laws.

CORNELIUS J. PECK

PROCEDURE

In Personam Jurisdiction Expanded—Force and Effect of Service of Process Outside of State. Within recent years several state legislatures have enacted legislation extending the bases for jurisdiction over nonresidents. The Washington legislature in Chapter 131 of the 1959 Session Laws has enacted a statute that is probably as comprehensive as any to be found in the country.[1]

Section 1 amends RCW 4.28.180 which relates to personal service out of state. Such service may be made upon any party. It is to be noted that the word "party" is used, thereby presumably including both individuals and corporations. Formerly, personal service outside the state was only equivalent to service by publication. As a result of the amendment, such service, if upon a citizen or resident of the state or upon a person who has submitted to the jurisdiction of the state, is to have the force and effect of personal service within the state.

[33] Bolling v. Sharpe, 347 U.S. 497 (1954).

[1] Chapter 131 is patterned after 110 ILL. ANN. STAT. 16 and 17. The Illinois statute is commented upon 50 NW. U. L. REV. 599, 31 NOTRE DAME LAW. 223 and 5 DE PAUL L. REV. 106.