

# CRS Report for Congress

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## Minimum Wage, Overtime Pay, and Child Labor: Amending the Fair Labor Standards Act

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### Summary

The Fair Labor Standards Act (FLSA) is the basic federal statute dealing with minimum wages, overtime pay, and child labor. First enacted in 1938, it has been amended through the years to take into account changing workplace trends and to meet new worker and employer concerns. In the 107<sup>th</sup> Congress, a wide range of changes in the FLSA has been proposed — some to strengthen the Act; others, arguably, to reduce the level of worker protection. This report provides a quick overview of the status of FLSA-related legislation at the close of the 107<sup>th</sup> Congress.<sup>1</sup>

### An Introduction to the FLSA

When the federal wage and hour bill (the FLSA) was enacted in 1938, it was not an especially new concept. Questions about minimum wages, overtime pay, child labor, and related issues had been a central part of American (and world) policy concerns for at least half a century. But only in the wake of the Great Depression was Congress able to forge a comprehensive federal measure that would withstand judicial review while respecting the idiosyncracies both of employers and workers.

A living document, the FLSA has undergone major amendment on eight separate occasions, in addition to numerous more narrowly targeted amendments designed to address particular workplace concerns. In terms of subject matter, the Act is divided roughly into three spheres: minimum wage (Section 6), overtime pay (Section 7), and child labor (Section 12). These are accompanied by a body of statutory exemptions or

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<sup>1</sup> For a more comprehensive overview of legislative initiatives of the 107<sup>th</sup> Congress, see CRS Report RL30993, *The Fair Labor Standards Act: Wage/Hour and Related Issues Before the 107<sup>th</sup> Congress*, by William G. Whittaker.

exceptions (Section 13). Definitions appear in Section 3. Other sections, *inter alia*, deal with administration, penalties, and appeals.

*The federal minimum wage* is set in statute and remains at a fixed rate (normally, declining in value through attrition) until changed through legislative action. *Overtime requirements* (1½ times a worker's *regular rate* of pay) for hours worked in excess of 40 per week are also set in statute. *Child labor* protections are, in part, set out in statute but with wide latitude for standards-setting and regulation by the Department of Labor.

## Wage/Hour Proposals in the 107<sup>th</sup> Congress

Because wage/hour and child labor legislation has been on the congressional agenda, intermittently, through more than 6 decades, its consideration has developed along more or less standard lines — but with certain recent variations.

### Packaging

Packaging of wage/hour measures can be critical. From the original Act of 1938 up through the 1989 FLSA amendments, such legislation was freestanding. While it might deal with overtime pay or child labor or minimum wage or immediately related subjects (singularly or as part of a package), it normally did not include broader tax or unrelated business matters. In 1996, however, various FLSA amendments were added to an umbrella tax package as a floor amendment. As the debate over the minimum wage developed in the 106<sup>th</sup> and 107<sup>th</sup> Congresses, the issue of *linkage* came to be viewed as *traditional*. Thus, some argue that an increase in the minimum wage *for workers* must be combined with tax breaks *for employers*: that the former should not move forward without the latter.

Since almost every element of the FLSA can be contentious, even internal linkage can impact the likelihood of enactment of new legislation — either enhancing or diminishing the chance that a bill will actually become law. In terms of legislation, any approach — freestanding or a package, purely labor standards or linked with business concerns — is fraught with risks. Support for or opposition to labor standards laws has often been philosophical. The issues, however, are also essentially economic: who wins, who loses, and who pays.

### Where Things Stand

In the 107<sup>th</sup> Congress, legislative proposals dealing with the minimum wage, overtime pay, and child labor have taken a variety of forms — from simple single-issue proposals to umbrella measures that deal with a range of changes in the FLSA and with other subjects as well. The tables that follow provide a simple overview of the various proposals, broken down by three general categories: minimum wages, overtime pay, and child labor. In some cases, a particular bill will be listed on more than one table.

**Table 1. Minimum Wage Proposals of the 107<sup>th</sup> Congress**

<b>Bill no.</b>	<b>Sponsor</b>	<b>Increase minimum to:</b>	<b>Effective date for the final step increase <sup>a</sup></b>	<b>Action beyond referral</b>	<b>Other components</b>
H.R. 222	Traficant	\$6.15	July 1, 2002	—	—
H.R. 546	Quinn	6.15	April 1, 2002	—	Umbrella bill <sup>b</sup>
H.R. 648	Graham	—	—	—	Exempts certain funeral industry employees <sup>c</sup>
H.R. 665	Bonior	6.65	January 1, 2003	—	CNMI <sup>d</sup>
H.R. 881	Isakson	—	—	—	Alters wage treatment, blind and disabled workers
H.R. 1441	DeMint	5.15	—	—	States meeting standards may opt out of federal minimum wage
H.R. 1990	Miller, George	6.65	January 1, 2003	—	Umbrella bill plus CNMI <sup>e</sup>
H.R. 2070	Tiberi	—	—	Subcommittee mark-up; forwarded to full committee	Minimum wage and overtime pay exemption for certain sales workers
H.R. 2111	Quinn	6.15	April 1, 2002	—	Umbrella bill <sup>f</sup>
H.R. 2241	Traficant	6.15	July 1, 2002	—	—
H.R. 2424	Traficant	6.77	2 years & 90 days from enactment	—	—
H.R. 2661	Miller, George	3.55 plus (CNMI)	30 days from enactment, plus a phase-up to federal standard	—	General reforms concerning the CNMI
H.R. 2679	Andrews	—	—	—	Minimum wage/overtime pay exemptions, organized camps
H.R. 2812	Sanders	8.15	January 1, 2003	—	Indexation of minimum wage
H.R. 3678	Graham	—	—	—	Exempts certain “construction engineering & design professionals”
H.R. 4799	Bonior	6.65	January 1, 2004	—	CNMI <sup>d</sup>

Bill no.	Sponsor	Increase minimum to:	Effective date for the final step increase <sup>a</sup>	Action beyond referral	Other components
H.R. 5520	Johnson, Sam	—	—	—	Minimum Wage and Overtime Pay Exemption for Seasonal Fireworks Salespersons
S. 8	Daschle	\$6.65	January 1, 2003	—	Umbrella bill plus CNMI <sup>g</sup>
S. 277	Kennedy	6.65	January 1, 2003	—	CNMI <sup>d</sup>
S. 940	Dodd	6.65	January 1, 2003	—	Umbrella bill plus CNMI <sup>e</sup>
S. 964	Kennedy	6.65	January 1, 2003	Legislative Calendar, General Orders, No. 54.	CNMI <sup>d</sup>
S. 2538	Kennedy	6.65	January 1, 2003	Legislative Calendar, General Orders, No. 385	CNMI <sup>d</sup>

<sup>a</sup> Most bills project a series of step increases. The date listed here represents the final step increase.

<sup>b</sup> The major portion of the bill deals with tax legislation; alters wage/hour treatment of certain inside sales, funeral industry, and computer services personnel.

<sup>c</sup> Bill would exempt licensed funeral directors and embalmers from minimum wage and overtime pay protections.

<sup>d</sup> Bill would extend federal minimum wage protection, in steps, to workers in the Commonwealth of the Northern Mariana Islands (CNMI).

<sup>e</sup> This is a composite bill dealing with range of education, welfare, and social reform issues in addition to raising the federal minimum wage and extending it, in steps, to the CNMI. The bill also provides for a “living wage.” Further concerning the “living wage,” see H.R. 917 and H.R. 1457.

<sup>f</sup> The major portion of the bill deals with business and real estate taxes. It would increase the minimum wage to \$6.15 per hour after April 1, 2002, but make no other changes in the FLSA.

<sup>g</sup> The bill would raise the minimum wage and extend it, in steps, to the CNMI. The bill deals with other socio-economic reforms as well.

**Table 2. Overtime Pay Proposals of the 107<sup>th</sup> Congress**

Bill no.	Sponsor	Action beyond referral	Impact	Other components
H.R. 546	Quinn	—	Exempts certain funeral industry and inside sales personnel; changes, existing exemption, certain computer workers	Umbrella bill <sup>a</sup>
H.R. 648	Graham	—	Exempts certain funeral service workers	Minimum wage component <sup>b</sup>

Bill no.	Sponsor	Action beyond referral	Impact	Other components
H.R. 1289	Lantos	—	Restricts mandatory overtime for “a licenced health care employee” <sup>c</sup>	—
H.R. 1545	Andrews	—	Alters existing exemption of certain computer workers	—
H.R. 1602	Ballenger	Hearing in Sub-committee	Redefines “regular rate” for overtime pay calculation purposes	—
H.R. 1902	Langevin	—	Restricts mandatory overtime for “a licensed health care employee” <sup>c</sup>	—
H.R. 1982	Biggert	Oversight hearings held	Permits private sector employers to offer “comp time” to their employees	—
H.R. 2070	Tiberi	Marked-up by sub-committee, reported to full committee	Would exempt certain inside sale personnel, with certain conditions, from overtime pay protection	—
H.R. 2679	Andrews	—	Overtime pay exemption, organized camps	Minimum wage exemption
H.R. 3017	Udall (N.Mex.)	—	Mandates report on mandatory overtime of nurses, Department of Veterans’ Affairs	Employment policy, Veterans’ Health Admin.
H.R. 3238	Stark	—	Limits mandated overtime for nurses serving Medicare patients	—
H.R. 3678	Graham	—	Exempts certain “construction engineering & design professionals”	—
H.R. 5520	Johnson, Sam	—	Minimum Wage and Overtime Pay Exemption for Seasonal Fireworks Salespersons	—
S. 624	Gregg	—	Proposes a restructuring of the overtime pay provisions of the FLSA <sup>d</sup>	—
S. 1188	Rockefeller	Reported from committee, S.Rept. 107-80 <sup>e</sup>	Mandates report on mandatory overtime of nurses, Department of Veterans’ Affairs	Employment policy, Veterans’ Health Admin.
S. 1686	Kennedy	—	Limits mandated overtime for nurses serving Medicare patients	—

<sup>a</sup> The major portion of bill deals with tax legislation; would increase the minimum wage. It also exempts certain funeral industry workers from minimum wage protection.

<sup>b</sup> Bill would exempt licensed funeral directors and licensed embalmers from minimum wage protection.

<sup>c</sup> H.R. 1289 (Lantos) and H.R. 1902 (Langevin) are similar, not identical.

<sup>d</sup> The bill would allow for employers to offer “comp time” to their employees, permit a biweekly work period (80 hours) rather than the now standard 40-hour work week, and make other changes in the FLSA. <sup>e</sup>The substance of S. 1188 was added to H.R. 3447 and passed (P.L. 107-135).

**Table 3. Child Labor Proposals of the 107<sup>th</sup> Congress**

Bill no.	Sponsor	Action beyond referral	Impact
H.R. 961	Lantos	—	Umbrella bill strengthening U.S. child labor law
H.R. 1869	Frost	—	Bill to protect young persons employed in firm also employing person with record of crime or of violence
H.R. 2239	Roybal-Allard	—	The CARE Act of 2001: strengthens U.S. child labor law, special provisions dealing with children in agriculture <sup>a</sup>
H.R. 2639	Pitts	—	To permit Amish youth, at age 14, to work in wood processing plants
H.R. 3070	Petri	—	To provide regulations governing traveling sales crews and to prohibit employment of persons under 18 years of age in traveling sales work, under specified conditions. <sup>b</sup>
H.R. 4667	Foley	—	To provide “exploitive child modeling” with persons under 17 years of age.
S. 96	Kohl	—	Would provide new protections for young persons engaged in sales work and prohibit employment by persons under 18 years of age in traveling sales work under specified conditions <sup>b</sup>
S. 869	Harkin	—	The CARE Act of 2001: strengthens U.S. child labor law, special provisions dealing with children in agriculture <sup>a</sup>
S. 1241	Specter	—	To permit Amish youth, at age 14, to work in wood processing plants
S. 2549	Kohl	—	Prohibits employment of persons under 18 years of age in “door-to-door” or related sales work that keeps them away from home more than 24 hours <sup>b</sup>

<sup>a</sup>H.R. 2239 and S. 869 are, in part, similar. However, H.R. 2239 is more far-reaching and comprehensive.

<sup>b</sup>While H.R. 3070 and S. 96 deal with the same subject area, they are structured somewhat differently and are not identical bills. S. 2549 is an abbreviated version of S. 96.