

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 917 Wage and Employment Benefits

SPONSOR(S): Commerce Committee, Yeager and others

TIED BILLS: IDEN./SIM. BILLS:

FINAL HOUSE FLOOR ACTION: 86 Y's

30 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/HB 917 passed the House on May 2, 2023, as SB 892.

The federal Fair Labor Standards Act (FLSA) provides workers with minimum wage, overtime pay, and child labor protections. The FLSA authorizes the U.S. Secretary of Labor to administer the FLSA provisions, including workplace inspections, investigations, and enforcement of violations. The current federal minimum wage rate under the FLSA is \$7.25 an hour. Most wage and salary workers are covered by the FLSA. The FLSA exempts certain employers and employees from the federal minimum wage and overtime requirements, including minor league baseball players.

Pursuant to the State Constitution, on September 30, 2021, Florida's minimum wage increased to \$10 per hour. Each year, thereafter, Florida's minimum wage will increase by \$1 until the minimum wage reaches \$15 per hour on September 30, 2026. Beginning in 2027, the minimum wage will be adjusted annually for inflation, as it had from 2005-2021.

The Florida Minimum Wage Act (Act) was enacted in 2005 to implement the minimum wage provisions in the State Constitution. The Act designates the Department of Economic Opportunity (DEO) as the state agency that implements the minimum wage requirements and establishes procedures with respect to enforcement of violations. The Act specifies that:

- Only those individuals entitled to receive the federal minimum wage under the FLSA, and its implementing regulations, are eligible to receive the state minimum wage.
- Federal minimum wage exemptions in the FLSA are considered incorporated into the Act.

The bill amends the Act to clarify that the state minimum wage will track the federal minimum wage, as set forth and "as amended," in the FLSA. This aligns Florida's minimum wage exemptions with recent amendments to federal exemptions.

The bill does not appear to have a fiscal impact on state or local government.

The bill was approved by the Governor on June 12, 2023, ch. 2023-222, L.O.F., and will become effective upon becoming a law.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Fair Labor Standards Act

The federal Fair Labor Standards Act (FLSA), enacted in 1938, provides covered workers with minimum wage, overtime pay, and child labor protections.¹ In 1938, the FLSA established a minimum wage of \$.25 an hour. The current federal minimum wage rate is \$7.25 an hour, which went into effect July 24, 2009.² The FLSA applies to employment within any state in the U.S., the District of Columbia or any territory or possession of the U.S.³

The FLSA covers most private and public sector employees. However, certain employers and employees are exempt from coverage, including: individuals with disabilities, youth workers, tipped workers and executive, administrative and professional workers. The FLSA covers businesses if the business has annual sales of at least \$500,000.⁴ It also covers certain individual employees if such employee is engaged in interstate commerce.

Regardless of the dollar amount of revenues of a business, the FLSA applies to:⁵

- **Governments:** Federal, state, or local government agencies.
- **Hospitals:** Hospitals, or institutions primarily engaged in the care of the sick, the aged, or the mentally ill or disabled who live on the premises. (It does not matter if the hospital or institution is public or private or is operated for profit or not-for-profit.)
- **Schools:** Pre-schools, elementary or secondary schools or institutions of higher learning (e.g., college), or a school for mentally or physically handicapped or gifted children. (It does not matter if the school or institution is public or private or operated for profit or not-for-profit.)

The FLSA includes several exemptions from the federal minimum wage provisions, including:⁶

- Executive, administrative and professional employees;
 - Teachers and academic administrative personnel in elementary and secondary schools, outside sales employees, and employees in certain computer-related occupations.
- Employees in certain seasonal amusement or recreational establishments, employees in certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery;
- Farm workers employed by certain employers;
- Casual babysitters and persons employed as companions for the elderly or infirm;

¹ 29 U.S.C. § 201-219 and 29 C.F.R. ch. V.

² Congressional Research Service, CRS Report R42713, *The Fair Labor Standards Act (FLSA): An Overview*, [https://crsreports.congress.gov/product/pdf/R/R42713#:~:text=The%20Fair%20Labor%20Standards%20Act%20\(FLSA\)%20provides%20workers%20with%20minimu.m.e.employees%20are%20exempt%20from%20coverage](https://crsreports.congress.gov/product/pdf/R/R42713#:~:text=The%20Fair%20Labor%20Standards%20Act%20(FLSA)%20provides%20workers%20with%20minimu.m.e.employees%20are%20exempt%20from%20coverage), (last visited Mar. 14, 2023). (The main FLSA provisions and accompanying Department of Labor (DOL) regulations constitute what is commonly known as federal wage and hour laws and federal child labor law.)

³ Congressional Research Service, CRS Report R42713, *The Fair Labor Standards Act (FLSA): An Overview*, [https://crsreports.congress.gov/product/pdf/R/R42713#:~:text=The%20Fair%20Labor%20Standards%20Act%20\(FLSA\)%20provides%20workers%20with%20minimu.m.e.employees%20are%20exempt%20from%20coverage](https://crsreports.congress.gov/product/pdf/R/R42713#:~:text=The%20Fair%20Labor%20Standards%20Act%20(FLSA)%20provides%20workers%20with%20minimu.m.e.employees%20are%20exempt%20from%20coverage), (last visited Mar. 14, 2023). (The FLSA does not apply to employees working in a foreign country even if the employer has its main office in the U.S.)

⁴ The size of an enterprise is measured by its “annual sales or business done.” Annual sales or business done includes all business activities that can be measured in dollars. Thus, retailers are covered by the FLSA if their annual sales are at least \$500,000. Owners of rental properties are covered if they collect at least \$500,000 annually in rent. 29 C.F.R. §§ 779.258-779.259.

⁵ U.S. Department of Labor, Fair Labor Standards Act Advisor, <https://webapps.dol.gov/elaws/whd/flsa/scope/screen10.asp>, (last visited Mar. 15, 2023).

⁶ 29 U.S.C. § 213. (It also includes separate exemptions from overtime pay.)

- Border patrol agents⁷; and
- Baseball players who are compensated pursuant to a contract that provides for a weekly salary for services performed during the league's championship season at a rate that is not less than a weekly salary equal to the minimum wage.

The FLSA was amended in 2014, related to border patrol agents, and again in 2018, to exempt minor league baseball players who are paid at least \$290 per week during the 2018 championship season from the federal minimum wage rate and overtime pay.⁸ These two amendments were the only amendments made to the minimum wage exemptions provisions of the FLSA since Florida passed its minimum wage law in 2005.⁹

The FLSA provides that if states enact worker protections, including minimum wage rates, that are more protective of employees than what is provided by the FLSA, the state law applies.¹⁰ Consequently, no state law may weaken the worker protections in the FLSA. However, state laws that impose greater worker protections will supersede those in the FLSA.¹¹

Thirty states plus Washington DC, Guam, Puerto Rico, and the Virgin Islands provide a minimum wage greater than the federal minimum wage. Thirteen states provide a minimum wage that is equal to the federal minimum wage. Five states have not adopted a minimum wage and two states have a minimum wage that is below the federal minimum wage.¹² For those seven states, the federal minimum wage applies, but only to those workers covered by the FLSA.

Article X, Section 24 of the Florida Constitution

On November 2, 2004, Floridians voted to amend the Florida Constitution by adding a minimum wage provision (Section 24) that established the state minimum wage.¹³ Prior to this date Florida did not have a law on minimum wage so the FLSA applied for covered workers. Section 24 provides the amount of the minimum wage and the procedure for calculating increases in the minimum wage.¹⁴

Florida voters again on November 3, 2020, voted to approve a constitutional amendment related to the state's minimum wage, Amendment 2, to gradually increase the state's minimum wage to \$15 an hour by the year 2026.¹⁵ Pursuant to the passage of Amendment 2, on September 30, 2021, Florida's minimum wage increased to \$10 per hour. Each year, thereafter, Florida's minimum wage will increase

⁷ Border Patrol Agent Pay Reform Act of 2014, S.1691, 113th Cong, (2014).

⁸ See Levi Weaver, On Minor-League Pay, *MLB's Stance Doesn't Line Up with the Facts*, ATHLETIC (Apr. 4, 2018), <https://www.theathletic.com/293189/%202018/04/04/on-minor-league-pay-mlbs-stance-doesnt-line-up-with-the-facts/> (last visited March 1, 2023). (When recounting salary scale per level of minor league baseball, the article notes "federally-recognized poverty line is \$12,140 per year for single-individual households." According to the article, a not-insignificant percentage of minor league players are able to subsidize their relatively meager monthly salaries by drawing upon the signing bonuses they received from their MLB clubs when first entering the professional ranks. These bonuses can range anywhere from \$10,000 to several million dollars. "The top 64 picks [in the MLB draft] last year all received a bonus of over \$1,000,000 before taxes, but roughly 40% of players signed for one-time bonuses of \$10,000 or less.")

⁹ S. 448.110, F.S., expressly references ss. 213 and 214 of the FLSA, which address minimum wage exemptions and employment under special certificates, respectively. However, s. 214 has not been amended since 1989. (See Pub. L. 101-157, § 4(d), Nov. 17, 1989, 103 Stat. 941.)

¹⁰ 29 U.S.C. §218.

¹¹ Congressional Research Service, CRS Report R42713, *The Fair Labor Standards Act (FLSA): An Overview, Updated March 2, 2023*,

[https://crsreports.congress.gov/product/pdf/R/R42713#:~:text=The%20Fair%20Labor%20Standards%20Act%20\(FLSA\)%20provides%20workers%20with%20minimum%20employees%20are%20exempt%20from%20coverage](https://crsreports.congress.gov/product/pdf/R/R42713#:~:text=The%20Fair%20Labor%20Standards%20Act%20(FLSA)%20provides%20workers%20with%20minimum%20employees%20are%20exempt%20from%20coverage), (last visited Mar. 14, 2023).

¹² U.S. Department of Labor, Consolidated Minimum Wage Table, <https://www.dol.gov/agencies/whd/mw-consolidated> (last visited Mar. 15, 2023).

¹³ Art. X, s. 24., Fla. Const.

¹⁴ Art. X, s. 24 (c), Fla. Const.

¹⁵ U.S. Department of State, *Notice of Increase to State of Florida's Minimum Wage*, <https://www.state.gov/wp-content/uploads/2021/01/2021-01-29-Notice-FL-Minimum-Wage-Increase.pdf> (last visited Mar. 3, 2023).

by \$1 until the minimum wage reaches \$15 per hour on September 30, 2026.¹⁶ Beginning in 2027, the minimum wage will be adjusted annually for inflation, as it had been done from 2004 - 2021.

Related to minimum wage, the Florida Constitution states, “All working Floridians are entitled to be paid a minimum wage sufficient to provide a decent and healthy life, that protects their employers from unfair low wage competition, and that does not force them to rely on taxpayer-funded public services.”¹⁷

The Florida Constitution references the FLSA and specifically ties the meaning¹⁸ of certain terms, “Employer,” “Employee” and “Wage,” to have the meanings established under the FLSA and its implementing regulations.¹⁹ It also indicates that that case law, administrative interpretations, and other guiding standards developed under the federal FLSA must guide the construction of Florida’s Constitution related to Section 24 and any implementing statutes or regulations.²⁰

Florida Minimum Wage Act

The Florida Minimum Wage Act (Act) was enacted in 2005 to implement the minimum wage provisions in the State Constitution.²¹ The Act designates the Department of Economic Opportunity (DEO) as the state agency that implements the minimum wage requirements, establishes procedures with respect to civil actions alleging violations, and provides that it is the exclusive remedy under state law for violations of Section 24.²²

The Act provides that effective May 2, 2005, employers are required to pay employees a minimum wage at an hourly rate of \$6.15 for all hours worked in Florida. Only those individuals entitled to receive the federal minimum wage under the FLSA and its implementing regulations are eligible to receive the state minimum wage pursuant to the State Constitution and this statute. The provisions of ss. 213 and 214 of the federal Fair Labor Standards Act, as interpreted by applicable federal regulations and implemented by the Secretary of Labor, are incorporated by reference.²³

The Act requires DEO to calculate an adjusted state minimum wage rate and requires the Department of Revenue (DOR) and DEO to annually publish the amount of the adjusted state minimum wage and the effective date on their websites. The Act authorizes persons to file a complaint or inform any person of his or her potential rights pursuant to Section 24 regarding unpaid wages.²⁴ The Act also authorizes the Attorney General (AG) to bring a civil action to enforce these provisions. The AG may seek injunctive relief, and for willful violations, may seek to impose a fine of \$1,000 per violation, payable to the state.²⁵

As it relates to the federal minimum wage and the FLSA, the Act specifies that:²⁶

- Only those individuals entitled to receive the federal minimum wage under the FLSA, and its implementing regulations, are eligible to receive the state minimum wage; and

¹⁶ Department of Economic Opportunity, *Florida’s Minimum Wage*, https://floridajobs.org/docs/default-source/business-growth-and-partnerships/for-employers/posters-and-required-notices/2022-minimum-wage/2022-florida-minimum-wage-announcement.pdf?sfvrsn=961754b0_2 (last visited Mar. 3, 2023).

¹⁷ Art. X, s. 24 (a), Fla. Const.

¹⁸ *In re Advisory Opinion to the Atty. Gen. re Fla. Minimum Wage Amend.*, 880 So. 2d 636, 641–42 (Fla. 2004). (“The proposed amendment does not state that it is adopting the FLSA’s definition of the term “employee,” but provides that it is adopting the meaning of the term “employee,” which is a much broader concept.”)

¹⁹ Art. X, s. 24(b), Fla. Const.

²⁰ Art. X, s. 24(f), Fla. Const.

²¹ Ch. 2005-353, Laws of Fla., codified in s. 448.110, F.S.

²² S. 448.110(10), F.S.

²³ S. 448.110(3), F.S.

²⁴ S. 448.110(6), F.S.

²⁵ S. 448.110(7), F.S.

²⁶ S. 448.110(3), F.S.

- Provisions related to federal minimum wage exemptions in the FLSA are considered incorporated in the Act.

Professional Baseball in Florida

Currently, there are 12 minor league baseball teams that are affiliated with Major League Baseball (MLB) in Florida. There are approximately 500 players currently rostered, employed, and being paid by the 12 Florida Minor League Baseball teams.²⁷ Additionally, 15 MLB teams conduct major and minor league spring training in Florida at thirteen different spring training facilities, a decrease from 18 teams in 2008 and 16 teams in 2009. The Cleveland Indians (previously playing at Winter Haven), Los Angeles Dodgers (Vero Beach) and Cincinnati Reds (Sarasota) have all moved to Arizona in recent years.²⁸ Two teams that play in the MLB, the Miami Marlins and the Tampa Bay Rays, are permanently located in Florida.

The main baseball season runs from early April to early October with teams typically playing six days a week. There are also play-offs which take place at the end of the normal season for the top-ranking teams. The main season is preceded by spring training which typically starts around the middle of February. Many of Florida's baseball parks host other MLB teams every Spring as part of the Grapefruit League Spring Training season. According to a 2018 economic impact study, the 2018 Florida Grapefruit League generated an economic impact of approximately \$687 million, \$348 million in direct spending, 7,152 jobs, and \$253 million in earned wages, for the State of Florida.²⁹

According to the industry, baseball players hours vary widely based on a number of factors, which can vary. Players often perform extra activities, work longer hours than regularly scheduled, and perform different activities than their teammates.³⁰ As a result, the MLB has argued that the nature of the sport stymies conventional attempts at categorizing "work hours."³¹

Recently, MLB agreed to pay \$185 million to current and former minor league baseball players to settle a federal class action lawsuit in California alleging violations of minimum wage laws.³² In the lawsuit, the players sued MLB and the MLB Clubs claiming they failed to pay the players minimum wage and overtime pay in violation of the FLSA and state wage-and-hour laws in California, Arizona, and Florida.

MLB also agreed to rescind any prohibitions against teams paying wages to minor league players outside of the season. The MLB also committed to issuing a memorandum advising their clubs to compensate minor leaguers in compliance with wage-and-hour laws in effect in Arizona and Florida during spring training, extended spring training, instructional leagues, and the championship season in those states, including any minimum wage laws that apply.³³

²⁷ See Michael Avallone, *Then and now: Florida State League*, MiLB.com, <https://www.milb.com/news/florida-state-league-overview> (last visited Mar. 3, 2023).

²⁸ FloridaReview.co.uk, *FLORIDA SPRING TRAINING 2023*, <https://floridareview.co.uk/florida-events/florida-spring-training> (last visited Mar. 15, 2023).

²⁹ Florida Sports Foundation, *2018 MLB SPRING TRAINING ECONOMIC IMPACT STUDY*, <http://playinflorida.com/wp-content/uploads/2018/08/GFL-IS-Page-by-Page-Booklet-spread.pdf> (last visited Mar. 15, 2023).

³⁰ Bleacher Report, *Pregame Routines: A Typical Day in the Life of a Professional Baseball Player*, <https://bleacherreport.com/articles/1061824-pregame-routines-a-typical-day-in-the-life-of-a-professional-baseball-player> (last visited Mar. 15, 2023).

³¹ Pew Trusts, *Baseball Players Press Lawmakers for Minor League Labor Standards*, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/03/30/baseball-players-press-lawmakers-for-minor-league-labor-standards> (last visited Mar. 19, 2023).

³² *Aaron Senne et al vs. Office of the Commissioner of Baseball et al.*, Civil Case No. 14-cv-00608.

³³ NBC News, *MLB settles minor league players' wage-and-hour class action suit for \$185 million*, <https://www.nbcnews.com/news/us-news/mlb-settles-minor-league-players-wage-hour-class-action-suit-185-million-rcna38554> (last visited Mar. 15, 2023).

The Court held the final approval hearing related to the settlement on February 17, 2023. A late filed motion to object to the settlement was filed and the Court has taken the motion under consideration. A ruling is not expected until late March 2023.³⁴

Effect of Proposed Changes

The bill amends the Act to incorporate current and future amendments made to the FLSA into the Act, aligning Florida's minimum wage exemptions with federal exemptions.

Specifically, the bill:

- Deletes an unnecessary date;
- Adds "as amended" to the reference to the FLSA; and
- Provides that this specific amendment to the Act is intended to "clarify existing law."

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an effect on salaries paid to minor league baseball players.

D. FISCAL COMMENTS:

None.

³⁴ JND Legal Administration, *WELCOME TO THE SENNE V. OFFICE OF THE COMMISSIONER OF BASEBALL SETTLEMENT WEBSITE*, <https://www.baseballplayerwagecase.com/> (last visited Mar. 15, 2023).