

ol_1947-10-23

Non-fragile

Honorable Paul J. Kilday
House of Representatives
Washington 25, D. C.

October 23, 1947

Dear Congressman Kilday:

This is in reply to your letter of October 16, 1947, in which you refer to the factual situation described in your previous letter of November 21, 1945, and to former Administrator L. Metcalfe Walling's reply of November 21, 1945. In your first letter, you inquired concerning the applicability of the Fair Labor Standards Act to employees of a cigar manufacturer who does not sell cigars out of the State but who ships to Holland tobacco cuttings which are left over from the production of cigars. In your letter of October 16, 1947, you inquire regarding the effect of section 6 of the Portal-to-Portal Act where the cuttings are not shipped to Holland until more than two years after their production.

As you know, section 6 of the Portal-to-Portal Act provides a 2-year period of limitations "to enforce any cause of action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages" under the Fair Labor Standards Act, where the cause of action arises on or after May 14, 1947.

In my opinion, section 6 applies to employee suits brought under section 16(b) of the Fair Labor Standards Act for unpaid minimum wages, unpaid overtime compensation and liquidated damages. Thus, in the situation you present where more than 2 years have elapsed since the manufacture of the tobacco cuttings, employee actions would normally be barred by section 6 of the Portal-to-Portal Act.

In addition to civil action permitted under section 16(b), certain other sections of the Fair Labor Standards Act establish criminal liability for violations. Thus, section 15(a)(2) makes it unlawful for any person to violate the overtime or minimum wage provisions of the Act. Section 15(a)(1)—the "hot goods" provisions—makes it unlawful for any person "to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation" of the minimum wage or overtime provisions of the Act. Section 16(a) prescribes penalties to be imposed where any person is convicted of wilful violation of any of the provisions of section 15.

It is well settled "as a great principle of public policy" that the "United States, asserting rights vested in them as a sovereign government, are not bound by any statute of limitations, unless Congress has clearly manifested its intention that they should be so bound."

United States v. Nashville, Chattanooga & St. Louis Ry. Co., 118 U.S. 120, 125; United States v. Whited & Wheless, Ltd., 246 U.S. 552, 561. The general rule is that a statute of limitations does not apply to the Government unless the Government is specifically mentioned in the statute. United States v. Seaboard Airlines Ry. Co., 22 F. (2d) 113 (C.C.A. 4); United States v. Sligh, 24 F. (2d) 636 (C.C.A. 9). In view of the fact that section 6 of the Portal-to-Portal Act does not specifically make the statute of limitations applicable to the Government, it appears that the 2-year statute of limitations provided by that section does not apply to criminal actions brought under section 15(a)(1) or section 15(a)(2) of the Fair Labor Standards Act. Such actions, in my opinion, continue to be governed by the 3-year statute of limitations which is generally applicable to Federal criminal actions.

In regard to section 15(a)(2), the period of limitations begins to run at the time the goods are produced for interstate commerce in violation of the minimum wage and overtime provisions. Insofar as section 15(a)(1) is concerned, however, the period of limitations does not begin to run until the goods are actually shipped or delivered for shipment out of the State. Accordingly, if, in the situations you have in mind, the cuttings were produced for interstate commerce in violation of the minimum wage or overtime provisions, the 3-year statute of limitations in regard to section 15(a)(2) begins to run at the time of their production, but with respect to section 15(a)(1), the statute does not begin to run until the cuttings are shipped or delivered for shipment more than 2 years later.

If I can be of any further assistance, please do not hesitate to call upon me again.

Very truly yours,

Wm. R. McComb
Administrator

SOL:EGLamboley/509;mpj:hd
10-22/47