



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

June 14, 1990

Mr. Gary H. Gould, Director
Department of Labor and
Industrial Services
STATEHOUSE MAIL

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: 1990 Amendments of Section 44-1502, Idaho Code

Dear Mr. Gould:

The Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 et seq., defines minimum wages and sets certain standards for hours of work. It applies to employees of federal, state and local governments, employees engaged in or producing goods for interstate commerce, and employees in certain enterprises. It does not apply to private employers who are not engaged in interstate commerce and who have annual gross sales less than \$500,000.

As a result of action this year taken by the 1990 Centennial Legislature, Idaho wage law now has its own overtime requirement that applies to private employers. The essential question involved in your inquiry is whether the overtime requirements of FLSA have been extended to all private employers in the state of Idaho by the 1990 amendments to Idaho Code § 44-1502. For the reasons outlined below, the answer is "no."

In order to determine the effect of these recent changes in Idaho law, we will analyze the amendments to § 44-1502(3) in the order in which they were offered.

Celebrate
IDAHO
1890 • CENTENNIAL • 1990™

Mr. Gary H. Gould, Director
Department of Labor and
Industrial Services
June 14, 1990
Page 2

1. HB 596

The first bill introduced to amend Idaho Code § 44-1502 was HB 596. This bill made no reference to FLSA, but would have included all private employers in the state:

(3) Except as hereinafter otherwise provided, no employer shall employ any employee longer than forty (40) hours in a workweek consisting of seven (7) consecutive twenty-four (24) hour periods unless such employee receives compensation for employment in excess of forty (40) hours at a rate of not less than one and one-half (1 1/2) times the employee's regular rate of pay.

The phrase, "Except as hereinafter otherwise provided," refers to the basic exemptions for executive, administrative, professional and certain other employees that are contained in Idaho Code § 44-1504. The state exemptions parallel the federal statute but are less extensive. The list of employee classes exempted from the federal law can be found at 29 U.S.C. § 213, in Attachment 1 to this opinion.

The second definition of importance in interpreting HB 596 is the definition of "employer." Since the bill contained no definition, one would rely on the definition contained in the chapter being amended, Idaho Code § 44-1503:

"Employer" includes any person employing an employee or acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any state or political subdivision of a state, or any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

"Person" means any individual, partnership, association, corporation, business, trust, legal representative, or any organized group of persons.

Mr. Gary H. Gould, Director
Department of Labor and
Industrial Services
June 14, 1990
Page 3

The above state law definition of "employer" contains no interstate commerce or dollar volume test. Therefore, Idaho employers not otherwise covered by federal law would have been required to comply with state law, had HB 596 taken effect as originally drafted. The question of the scope of the state law must then be answered by analyzing whether later amendments changed the definition of "employer" to that contained in FLSA.

2. HB 903

The next amendment to Idaho Code § 44-1502(3) was contained in HB 903. The change is shown in legislative format:

Except as hereinafter otherwise provided in the case of overtime pay only and subject to the same exemptions and/or exceptions for overtime as provided now or hereafter under the federal fair labor standards act, no employer shall employ any employee longer than forty (40) hours in a workweek consisting of seven (7) consecutive twenty-four (24) hour periods unless such employee receives compensation for employment in excess of forty (40) hours at a rate of not less than one and one-half (1 1/2) times the employee's regular rate of pay.

This language is an attempt to incorporate all the intricacies of federal law into the state overtime requirement. The term "exemptions," as noted earlier, refers to classes of employees not covered by the FLSA overtime requirements.

The term "exceptions" has no clear referent in the federal law, i.e., there is no section in the FLSA labeled "exceptions." Nonetheless, the overtime requirements of the FLSA do not apply to enterprises that are not engaged in interstate commerce and that do not have gross annual sales volume in excess of \$500,000. Such enterprises fall outside the FLSA definition of an "enterprise engaged in commerce or in the production of goods for commerce" under 29 U.S.C. § 203 and thus need not comply with the overtime requirements of 29 U.S.C. § 207. See Attachment 2 to this opinion.

We conclude that the Legislature's intent, "in the case of overtime pay only," was to incorporate into Idaho law "the same

Mr. Gary H. Gould, Director
Department of Labor and
Industrial Services
June 14, 1990
Page 4

exemptions and/or exceptions for overtime as provided now or hereafter under the federal fair labor standards act. . . ." Thus, the overtime law does not apply to the classes of employees found at 29 U.S.C. § 213; nor does it apply to the classes of employers found at 29 U.S.C. § 203.

Any other interpretation would turn the language of HB 903 into mere surplusage, in contravention of the normal rule of statutory interpretation. Hartley v. Miller-Stephan, 107 Idaho 688, 692 P.2d 332 (1984). When a statute is amended, it must be presumed that the legislature intended the statute to have a meaning different from the meaning accorded to the statute before the amendment. In Interest of Miller, 110 Idaho 298, 715 P.2d 968 (1986).

As noted earlier, the 1990 Legislature's first amendment to Idaho Code § 44-1502 was contained in HB 596. That amendment was signed into law by the Governor on March 22, 1990 and would have subjected all private businesses to the overtime law. It must be presumed that HB 903, which was introduced in the House less than a week later, was intended to reach a different result, and did so, by incorporating into Idaho's overtime law "the same exemptions and/or exceptions" found under the FLSA.

3. HB 903a

The final amendment to § 44-1502(3) was inserted on the floor of the Senate during discussion of HB 903, and was later accepted by the House and signed into law by the Governor. This change, likewise shown in legislative format, left the law as it now stands:

(3) Except as hereinafter otherwise provided in the case of overtime pay only and subject to the same exemptions and/or exceptions for overtime as provided now or hereafter under the federal fair labor standards act; i.e., those employers not exempted or excepted by the overtime provisions of the federal fair labor standards act shall pay overtime as provided in this section, no employer shall employ any employee longer than forty (40) hours in a workweek consisting of seven (7) consecutive twenty-four (24) hour periods unless such employee receives compensation for employment in

Mr. Gary H. Gould, Director
Department of Labor and
Industrial Services
June 14, 1990
Page 5

excess of forty (40) hours at a rate of not less than one and one-half (1 1/2) times the employee's regular rate of pay.

We interpret this language to be an explicit restating of the bill's mandate to pay overtime and to take advantage of all the federal exemptions and exceptions. We do not read the amendment in HB 903a as changing the meaning of HB 903 itself. The phrase "i.e.," -- literally, "that is" or "that is to say" -- is usually taken to provide merely an example or further clarification, not to fundamentally alter, the matter commented upon.

In answer to the questions as they were asked:

1. In general, is the coverage of this state overtime law now exactly coextensive with the coverage of the maximum hour provisions of the federal Fair Labor Standards Act?

Yes, state law covers only those employers who have to comply with FLSA.

2. In particular, are Idaho employers whose annual gross volume of sales falls below the \$500,000 "enterprise test" threshold (29 U.S.C. § 203(s)(1)(A), as amended by Public Law 101-157 Section 3), covered by the state overtime law, § 44-1502, Idaho Code?

No. Such employers are not subject to the overtime requirements of FLSA and thus are not subject to the Idaho overtime law requirements either.

3. If the answer to question no. 2 is in the affirmative, then do the exemptions set forth in 29 U.S.C. §§ 213(a) and (b) apply to exempt such employers who fall below the \$500,000 threshold of the enterprise test from the operation of the state overtime law?

Not applicable.

4. Are employees who are covered by the "grandfather" provisions of Section 3(b) of Public Law 101-157 also subject to the state overtime law?

Mr. Gary H. Gould, Director
Department of Labor and
Industrial Services
June 14, 1990
Page 6

The 1989 amendments to the Fair Labor Standards Act (Public Law 101-157) provided for a minimum wage of \$3.80 effective April 1, 1990 and \$4.25 per hour in April, 1991. The threshold volume of sales for enterprises engaged in interstate commerce was raised to \$500,000. Employers who are no longer covered by FLSA because of that change are nonetheless required to continue to pay the previous minimum wage of \$3.35 per hour, must continue to pay overtime, and must comply with the child labor laws. Attachment 3, 29 U.S.C. § 206, Note: Preservation of Coverage.

Employees who receive the benefit of these "preservation of coverage" requirements will be treated the same no matter how state law is interpreted. If it is ultimately determined that the coverage of state law is the same as the federal, the "grandfathered" employees will be entitled to be paid overtime in accordance with the federal scheme, except that the higher state minimum wage would be due. If it is determined that the definition of "employer" is the broader state definition, the "grandfather" provisions would still affect only those employers who were previously required to comply with the FLSA. Since the state minimum wage, overtime and child labor provisions are equal to or stricter than federal law, this provision of federal law should not create enforcement problems.

If additional clarification is needed, please do not hesitate to contact me.

Very truly yours,



John J. McMahon
Chief Deputy Attorney General

Attachments