

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is centered in the narrow neck of the hourglass. The text is overlaid on the graphic.

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*Minimum Wage in the Territories and Possessions of the United States: Application of the Fair Labor Standards Act*

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March 12, 2008

**Abstract.** This report examines the history of the application of the federal minimum wage under the Fair Labor Standards Act to the territories and other possessions of the United States: specifically to Puerto Rico, the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands.

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# CRS Report for Congress

## Minimum Wage in the Territories and Possessions of the United States: Application of the Fair Labor Standards Act

Updated March 12, 2008

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Prepared for Members and  
Committees of Congress

# Minimum Wage in the Territories and Possessions of the United States: Application of the Fair Labor Standards Act

## Summary

The minimum wage under the Fair Labor Standards Act (FLSA) is generally applicable to any state, territory, or possession of the United States such as Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (CNMI). Implementation has been gradual, though the ultimate objective has been, consistently, to raise wages to the highest level that “is economically feasible without substantially curtailing employment.”

In 1937 and 1938, when Congress crafted the FLSA, there appears to have been little concern about its impact upon the U.S. territories and possessions. In 1940, the act was amended to permit Special Industry Committees (SICs) to visit Puerto Rico and the Virgin Islands to assess their economies and to make recommendations for a sub-minimum wage in certain industries. In 1956, the same procedure was instituted for American Samoa. Guam had always been under the act (though it may not have been implemented). The CNMI, in setting forth the terms of its association with the United States, had retained control over its own insular minimum wage.

By the 1980s and early 1990s, Puerto Rico and the Virgin Islands had emerged from the SICs procedures and come fully under the FLSA. Two territories remained to be accounted for: American Samoa and, in a different context, the CNMI.

It was generally assumed that the mainland minimum wage applied to American Samoa though it had not been implemented. During the early 1950s, the Department of the Interior moved to attract a new industry to the island group: namely, tuna canning. The first company, Van Camp Sea Foods, asked Congress to grant an exception from the FLSA and, in 1956, the Puerto Rican model was adopted. The exception remained in place until 2007 when, under the FLSA amendments of that year, the SIC system was abolished and the federal minimum wage, in steps, would be applied.

The CNMI was acquired by the United States in the aftermath of World War II. When, in the mid-1970s, it became a Commonwealth in association with the United States, the CNMI retained control over its minimum wage and certain aspects of immigration and trade policy. A decade later, in the 1980s, congressional hearings uncovered what were alleged to have been “sweatshop” practices involving the garment and tourism industries. With the 2007 FLSA amendments, the federal minimum wage will be applied, in steps, to the CNMI.

In the 110<sup>th</sup> Congress, several bills (H.R. 2, H.R. 976, H.R. 1591, H.R. 2206, and H.R. 5154) dealt with the minimum wage for Samoa and/or for the CNMI.

This report will be updated as warranted.

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# Minimum Wage in the Territories and Possessions of the United States: Application of the Fair Labor Standards Act

## Introduction

When Congress crafted the Fair Labor Standards Act (FLSA) during 1937 and 1938,<sup>1</sup> there appears to have been little concern about how its provisions might affect the territories and possessions of the United States. Gradually, through various procedures and over different time periods, the federal minimum wage has come to be applied in most of these jurisdictions. In Puerto Rico and the Virgin Islands, implementation was gradual, utilizing *special industry committees* (SICs). A parallel SIC was created for American Samoa during the middle 1950s. By the late 1980s or early 1990s, the SICs for Puerto Rico and the Virgin Islands had been phased out. For Samoa, the SICs seem to have had little effect in raising wage rates, though the procedure remained in place, intermittently, until the summer of 2007 when it was abolished. The FLSA was immediately applicable to Guam, though it was only enforced about two decades later, in 1959-1960.

The case of the Commonwealth of the Northern Mariana Islands (the CNMI) is somewhat different. The CNMI was acquired by the United States in the wake of World War II. With the creation of the United Nations, the island group was assigned to the United States as part of the Trust Territory of the Pacific Islands. By the mid-1970s, the islands had entered into a Covenant of Association with the United States under their current Commonwealth status. In doing so, they retained responsibility for the insular minimum wage — and exercised control over aspects of insular immigration policy. As conditions developed, goods produced in the CNMI were to be marketed as “Made in America.”

Combining the advantages of low wages (lower than those required in most other U.S. jurisdictions), the availability of alien contract labor from China and elsewhere, and the right to use a “Made in America” label for marketing purposes, the relatively small CNMI developed a substantial production industry. This was especially notable in garments. Over time, the alien labor force came to equal the natives of the CNMI and allegations of “sweatshop” conditions began to surface. At the same time, there were affirmations that entrepreneurs of the CNMI had done very well for themselves — that is to say, a business success story.<sup>2</sup>

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<sup>1</sup> The Fair Labor Standards Act of 1938, as amended, is the basic federal statute dealing with minimum wages, overtime pay, child labor, industrial homework, and related issues.

<sup>2</sup> See, for example, Clint Bolick, “Marianas Show How Free Markets Can Flourish,” *Human* (continued...)

Thus, among U.S. territories and possessions, the minimum wage had remained unresolved in American Samoa and the CNMI. Various bills were introduced during recent Congresses that would have increased the general minimum wage and, at the same time, extended the federal standard to the CNMI. In addition, some have suggested a modified restructuring of the Covenant of Association with regard to minimum wage and immigration — and with respect to marketing of CNMI products as “Made in America.” As a result of the enactment of H.R. 2206 (P.L. 110-28), procedures have now been added to the FLSA that will bring the insular minimum wage up to mainland standards.

This report is an introductory sketch of the role of the minimum wage in the territories and possessions of the United States. Omitted are nuances of policy that might rightly deserve more extended study.

## The Fair Labor Standards Act of 1938

As adopted in 1938, the FLSA (P.L. 75-718) defined *state* as “any state of the United States or the District of Columbia or any Territory or possession of the United States.”<sup>3</sup> No distinctions were made between the states and the other jurisdictions where FLSA wage/hour policy was concerned.

The general concept of the FLSA appears to have evolved from experience under the National Industrial Recovery Act (the NIRA, 1933-1935). The NIRA was basically voluntary, depending for much of its even limited success upon the goodwill of the several parties. Though the NIRA encountered problems dealing with the territories (notably, with Puerto Rico), there was built into the act a flexibility which, initially, the FLSA did not seem to enjoy.<sup>4</sup> The NIRA was declared unconstitutional in 1935 — but, still, it was very much on the minds of the Members of Congress in 1937 and 1938 and framed much of the context of the wage/hour debates of that period.

In 1938, the FLSA set a minimum wage of 25 cents per hour for covered workers, with step increases to 30 cents per hour one year after enactment and to 40 cents per hour seven years after enactment. However, the act also provided for a system of special industry committees (SICs) “for each industry engaged in

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<sup>2</sup> (...continued)

*Events*, April 18, 1997, p. 20; and Juliet Eilperin, *Roll Call*, January 8, 1998, p. 13. See also W. John Moore, “American Dream or Pacific Nightmare?” *National Journal*, December 13, 1997, p. 2522; William Branigin, “U.S. Pacific Paradise Is Hell for Some Foreign Workers,” *The Washington Post*, August 29, 1994, p. A1; and Branigin, “Northern Marianas: Not a Workers’ Paradise,” *The Washington Post*, October 14, 1997, p. A15.

<sup>3</sup> Section 3(c) of P.L. 75-718. As initially proposed, the wage/hour bills of the 75<sup>th</sup> Congress that evolved into the FLSA defined “state” as “any state of the United States or the District of Columbia.” As the legislation moved through Congress, the broader language was added. See S. 2475 (Black) and H.R. 7200 (Connery) of the 75<sup>th</sup> Congress.

<sup>4</sup> Concerning the National Industrial Recovery Act, see Bernard Bellush, *The Failure of the NRA*. New York, Norton & Company, Inc., 1975.

commerce or in the production of goods for commerce.” The Administrator of the Wage and Hour Division at the Department of Labor (DOL) was thus permitted to examine the several covered industries and, “as rapidly as is economically feasible without substantially curtailing employment,” to increase the federal minimum wage for particular industries through administrative processes.<sup>5</sup> Such administratively set minima were not to exceed 40 cents per hour — nor were they to fall below the level fixed by the statute for each statutory step increase. The Administrator could reject SIC recommendations and/or remand the matter to the committee (or to another committee). These administratively determined wage rates were to have effect only through a seven-year period. Thereafter, the 40-cent minimum would become applicable.<sup>6</sup>

Congress did not seem to anticipate immediate appointment of industry committees and, indeed, they came into being only gradually. Section 8 mandated that the Administrator “shall from time to time convene the industry committee for each such industry, and the industry committee shall from time to time recommend” the appropriate wage rates — taking into account “economic and competitive conditions.” It directed that such rates “not give a competitive advantage to any group in the industry” but, rather, that they should take into account “transportation, living, and production costs.” Nor was the age of the worker to be a part of the equation.<sup>7</sup> In general, the industry committee was a vehicle *for upward movement* of wage rates. Its discretion involved only the interim area between the statutory floor (25 cents an hour) and an upper level of 40 cents per hour.

Several factors came into play under the special industry committee procedures. Congress sought to provide for the establishment of the “highest minimum wage rate” consistent with the statute. However, it was equally determined that institution of the minimum rate should not “substantially curtail employment. And, finally, it provided that any committee-established *sub-minimum rates* would “not give a competitive advantage to any group in the industry.” Each of these issues was discussed at some length during the initial debates on the FLSA.<sup>8</sup>

The provision for industry committees under Section 5 and Section 8 has provided, through the years, a context for minimum wage treatment of some insular jurisdictions — though that was not, it appears, initially its purpose.

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<sup>5</sup> Section 5 of P.L. 75-718, June 25, 1938.

<sup>6</sup> Section 8 of P.L. 75-718.

<sup>7</sup> *Ibid.* Apprentices and similarly disposed persons were provided with a special option, but in the general workforce, a youth sub-minimum wage was not agreed to.

<sup>8</sup> Here again, the special committee was to elevate wages *above the minimum* and, potentially, to do so by grade of work; but, the minimum wage, *per se*, was not stratified by age nor by gender.

## Puerto Rico

In the 1938 statute, Puerto Rico was covered under the FLSA in the same manner as the states of the Union. However, between 1940 and 1996, it was afforded special treatment through a system of specially industry committees (SICs). Now, the minimum wage treatment of Puerto Rico is on a par with the several states.

Puerto Rico (with its capital at San Juan) was acquired by the United States as a result of the Spanish-American War (1898). Although its ultimate status would remain somewhat ambiguous, the island developed institutions that closely paralleled those of the states. Just as several states had experimented with minimum wage laws early in the century, so did the Puerto Rican legislature which adopted such a requirement in 1919.<sup>9</sup> Insular wage rates, however, remained far below those for most mainland workers through the 1930s. When, with the enactment of the FLSA in 1938, Puerto Rico was mandated to increase its wage floor, interests on the island argued that it would be hard pressed to do so without serious economic dislocation.

The upward flexibility permitted through the special industry committee structure may have been useful for the mainland but, for Puerto Rico, some argued that even the 25 cent floor may have been “too high.”<sup>10</sup> During 1939-1940, various industry groups pressed for “remedial legislation for Puerto Rico on [the] matter of wages-and-hours law,” claiming that “failure to secure relief means the total collapse of industries vital to our economic structure and [unemployment for] thousands of wage earners dependent thereon.”<sup>11</sup>

In 1940, Congress enacted new legislation designed specifically for Puerto Rico and the Virgin Islands. It allowed the FLSA minimum wage requirements to be set aside and replaced with special industry wage floors. These minima, to be developed by industry committees operating in cooperation with the US-DOL, were intended to reflect insular economic realities. Deviation from the national minimum wage under the FLSA was allowable “only for so long as and insofar as such employee is covered by a wage order issued by the Administrator [of the Wage and Hour Division within the US-DOL] pursuant to the recommendations of a special industry committee.”<sup>12</sup>

The intent of this special arrangement for Puerto Rico and the Virgin Islands was to bring the two jurisdictions up to the standards observed by the states as rapidly as might be economically feasible without substantially curtailing employment. At the same time, the committees “were prohibited ... from recommending a minimum

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<sup>9</sup> Dietz, James L. *Economic History of Puerto Rico: Institutional Change and Capitalist Development*. Princeton, Princeton University Press, 1986. p. 176. See also Carlos J. Lastra, *The Impact of Minimum Wages on a Labor-Oriented Industry*. San Juan: College of Social Sciences, University of Puerto Rico, 1961.

<sup>10</sup> Kantor, Harry S. “Two Decades of the Fair Labor Standards Act,” *Monthly Labor Review*, October 1958, p. 1099.

<sup>11</sup> See *Appendix to the Congressional Record*, May 2, 1940, p. 2632-2633.

<sup>12</sup> Section 3, Public Resolution No. 88, June 26, 1940.

wage rate that would give any native industry a competitive advantage over its counterpart in the United States.”<sup>13</sup>

The process of increasing wage parity with the mainland continued through more than half-a-century. During consideration of the 1989 FLSA amendments, Congress revisited the case of Puerto Rico — as it had through the years. It was found that, in most areas of production, the insular employers were meeting national standards. The 1989 enactments, thus, eliminated the special industry committee system for Puerto Rico and mandated, through a series of step increases in the insular wage structure (under the FLSA), that all covered workers be paid not less than the applicable federal minimum wage after April 1, 1996.<sup>14</sup>

## The Virgin Islands

Under the FLSA of 1938, the Virgin Islands were covered in the same manner as the several states. However, during the period 1940 to 1989, there was a time when wage rates were fixed by special industry committees — as had been the case with Puerto Rico. Since the mid-1990s, the minimum wage for the Virgin Islands has been set at the national level.

The Virgin Islands were acquired by the United States in 1917 through purchase from Denmark. There are about 68 islands in the American Virgin chain, with only about three actually populated. Collectively, the Islands have a population of slightly less than 150,000 people.<sup>15</sup> Charlotte Amalie is the capital.

The relationship between the Islands and the mainland evolved slowly through the decades following their acquisition by the United States. Like Puerto Rico, the Virgin Islands were covered under the original FLSA enactment of 1938; but, if hearings and floor debates are any indication, their inclusion may have been more nearly *pro forma* rather than the result of direct legislative intent.

During consideration of the FLSA in 1937 and 1938, very little attention appears to have been focused upon either the Virgin Islands or Puerto Rico. However, with enactment of the wage/hour legislation, industry became concerned about its impact and, through 1939 and 1940, Puerto Rican interests appealed to Congress for an amendment to the statute on behalf of the islands. Though the focus of congressional debate appears to have been upon Puerto Rico, the 1940 FLSA amendment applied to the Virgin Islands as well.<sup>16</sup> Where the federal minimum wage could be met, it was applied. Where significant unemployment might have resulted from imposition of mainland wage rates, the minima were set by industry committees with the approval of the US-DOL Wage and Hour Administrator.

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<sup>13</sup> Kantor, *op. cit.*, p. 1099.

<sup>14</sup> See P.L. 101-157, Section 4.

<sup>15</sup> Populations figures, throughout this paper, are estimates, though they will probably vary little from actual census figures.

<sup>16</sup> Section 3, Public Resolution No. 88, June 26, 1940.

As in Puerto Rico, FLSA coverage was gradually expanded for the Virgin Islands, together with the rest of the nation. In 1989, the Government of the Virgin Islands indicated that for all the covered industries, wage rates had been raised to meet the national standard. Therefore, the FLSA was again altered to eliminate any special treatment for the Virgin Islands.<sup>17</sup>

## Guam

The FLSA has applied to Guam since 1938, just as it has applied to the states of the Union. However, *it has only been enforced there since about 1959-1960.*

Guam, like Puerto Rico, was acquired by the United States in 1898 as a result of the Spanish-American War. For 50 years, it remained under the jurisdiction of the United States Navy. Then, in 1949, President Truman transferred administration of the island to the Department of the Interior. In 1950, Congress established a system of civil government for the island of, perhaps, slightly less than 200,000 people. Its capital is Agana. In 1968, the island was allowed to elect its own governor; in 1972, to elect a non-voting delegate to the U.S. Congress.<sup>18</sup>

Prior to World War II, socio-economic and cultural conditions in Guam were quite different from those of the United States or other industrialized countries.<sup>19</sup> Through the years, the insular labor force and wage structure appear to have remained multi-tiered with separate rates for alien workers imported from the Philippines, for native Guamanians, for Americans recruited on Guam, and for American workers recruited from the states.<sup>20</sup>

When the civil government was established (1950), colonial administration appears to have been somewhat chaotic. One observer stated, for example: "... existing laws represented a hodge-podge of rules, regulations, laws, naval expressions of policy, and letters and other documents having the force and effect of law."<sup>21</sup> As a "Territory or possession" of the United States, Guam was covered under the original FLSA; but, it seems that the statute was not enforced there. Thus, for these several reasons, Guamanian employers do not appear to have been involved in discussions during 1939 and 1940 which led Congress to alter the act with respect to Puerto Rico and the Virgin Islands. Guam, of that period, was simply too far removed from Washington to be really at issue.

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<sup>17</sup> See P.L. 101-157, Section 4.

<sup>18</sup> For general accounts of Guam, see Paul Carano and Pedro C. Sanchez, *A Complete History of Guam*. Rutland, Vermont: Charles E. Tuttle Company, 1964; and Russell L. Stevens, *Guam, U.S.A.: Birth of a Territory*. Honolulu: Tongg Publishing Co., LTD, 1953.

<sup>19</sup> *The Annual Report of the Governor of Guam*, by James T. Alexander, Governor of Guam and Commandant, Naval Station, 1939. p. 2.

<sup>20</sup> Leibowitz, Arnold H. "The Applicability of Federal Law to Guam," *Virginia Journal of International Law*, Fall 1975. p. 50.

<sup>21</sup> Stevens, *Guam, U.S.A.: Birth of a Territory*, op. cit., pp. 75-76.

With the war in the Pacific, Guam became immediately of interest. The island was occupied by the Japanese from late 1941 until 1944. When the United States reclaimed the island, much of its infrastructure appears to have been devastated. Much of the economy fell under government control and regulation. There was a significantly expanded post-war military population that was not native to the island — plus a major population of Filipinos brought into the island by American contractors.<sup>22</sup>

The case for enforcement of federal minimum wage standards in Guam was strengthened with the 1948 decision of the U.S. Supreme Court in *Vermilya-Brown Co., Inc., et al. v. Connell et al.* [335 U.S. 377 (1948)]. Although at issue was the application of the FLSA to employees of American contractors engaged in the construction of a military facility for the United States in Bermuda (part of Great Britain), there were clear implications for Guam. The Court identified a “possession” covered under the act as including “Puerto Rico, Guam, the guano islands, Samoa and the Virgin Islands.”<sup>23</sup> In dissent in *Vermilya-Brown*, further, Justice Jackson suggested that the situation of a U.S. facility in Bermuda was of a character different from that of “our possessions” as enumerated by the Court’s majority.<sup>24</sup>

In addition, with adoption of an Organic Act for Guam in 1950, a commission established to review the application of federal laws to the island found that FLSA applicability to Guam was “indisputable, particularly in view of the recent decision” in *Vermilya-Brown*. But, the commission noted: “The Wage and Hour Division [US-DOL] has no field office convenient for serving that area.”<sup>25</sup> Again, in 1953, Chief Judge McLaughlin of the U.S. District Court for Hawaii, pointed out, in part based on the *Vermilya-Brown* decision, that the FLSA was applicable to “Guam, Johnston Island, American Samoa, and so forth.”<sup>26</sup>

By the late 1950s, as potential problems began to mount with regard to labor standards for aliens employed in the construction of overseas bases, Congress revisited the issue of offshore application of the FLSA. Through the course of hearings in 1957, it was clear that the FLSA applied to Guam — though there was some question about coverage for the Filipino workers. Following from the hearings, the 85<sup>th</sup> Congress adopted amendments to the FLSA under which Guam, American Samoa and certain other jurisdictions were specifically written into the act.<sup>27</sup> In

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<sup>22</sup> See Laura Thompson, *Guam and Its People*, Princeton: Princeton University Press, 1974; and, Roy E. James, “Military Government: Guam”, *Far Eastern Survey*, v. 15, no. 18 (1946).

<sup>23</sup> *Vermilya-Brown Co., Inc., et al. v. Connell et al.*, 335 U.S. 388 (1948).

<sup>24</sup> *Ibid.*, 391-392.

<sup>25</sup> *Resource Material Used in the Preparation of the Report of the Commission on Application of Federal Laws to Guam*. U.S. House of Representatives, Committee on Interior and Insular Affairs, 81<sup>st</sup> Cong., 2<sup>nd</sup> Sess., Committee Print, 1952, p. 170.

<sup>26</sup> *Daves et al. v. Hawaiian Dredging Co., Ltd., et al*, 114 F. Supp. 647.

<sup>27</sup> U.S. Congress. House. Committee on Education and Labor. Subcommittee on Labor Standards, *Fair Labor Standards Act*. June 24, 1957. See P.L. 85-231. Future coverage for (continued...)

January 1959, the first compliance officer appears to have been dispatched to Guam by the US-DOL Wage and Hour Division.<sup>28</sup>

## American Samoa

The FLSA has applied to American Samoa since 1938, just as it has to the states. However, it appears not to have been enforced there until the late 1950s — and, then, through a special industry committee structure. The special industry committee arrangement was repealed with the 2007 FLSA amendments (H.R. 2206: P.L. 110-28). Under P.L. 110-28, changes in the insular rate were to proceed, incrementally, until it became coequal with the federal rate. It would then increase in tandem under the provisions of the federal statute.

### Insular History and Governance

The Samoan Islands are divided into two segments: Western Samoa, formerly British and now independent; and American Samoa, a cluster of seven islands, governed from the insular capital of Pago Pago. There had been an American presence in Samoa through the latter 19<sup>th</sup> century, but with the Spanish-American War, there developed a series of treaties and leases between the insular officials and the United States. In 1900, President William McKinley “directed the Navy to assume responsibility for Eastern (thereafter, American) Samoa.”

McKinley’s directive remained in effect until 1951 when, with the Samoan naval station closed, authority fell to the Department of the Interior.<sup>29</sup> During the middle 1950s, an insular constitutional government developed and, in 1960, a constitution was approved. Like Guam, American Samoa appears to have been covered by the FLSA since enactment of the law in 1938. However, the act does not appear to have been enforced there until the late 1950s.

### Tuna and the Roots of Development

In 1953, development of a tuna canning operation commenced in American Samoa — an industry that quickly became the island’s primary private sector employer. With the Supreme Court decision in 1948 in *Vermilya-Brown* (discussed above), Samoan industry became increasingly aware of the likely enforcement of minimum wage and other FLSA standards. It was with *Vermilya-Brown* in mind that representatives of Van Camp Sea Food Co., Inc., appeared before the Senate Committee on Labor and Public Welfare in May 1956 to seek amendment of the act.

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<sup>27</sup> (...continued)

alien workers was also confirmed by legislation.

<sup>28</sup> Conversation with US-DOL staff, June 1980.

<sup>29</sup> Van Cleve, Ruth G. *The Office of Territorial Affairs*. New York, Praeger Publishers, 1974. p. 60-65.

The company urged the creation of a special arrangement under which the American Secretary of Labor would promulgate wages for insular industries and, in effect, would institute a sub-minimum wage commensurate with insular economic conditions.<sup>30</sup> In the absence of such an amendment, the full weight of the federal minimum wage would have applied. Thus, employer spokespersons readily accepted an industry committee structure (an SIC), similar to those then in operation for Puerto Rico and the Virgin Islands, which could provide a rate less than the rate in effect nationally.<sup>31</sup> As in other offshore jurisdictions, the industry committee structure for American Samoa was intended to be an interim measure while the insular economy moved toward mainland standards.

Thirty years later, the special industry committee structure was still in place. In 1986, SIC No. 17, following routine hearings and investigation into the condition of the various segments of the insular economy, concluded that the minimum wage for Samoa could be raised to the mainland level without risk that it would “substantially curtail employment in the industries” of the island. Thus, following a period of adjustment until April 1988, the Samoan minimum wage would have become the same as that for the mainland.<sup>32</sup> As a result, the special industry committee system would have been disbanded, with Samoa achieving the same status in wage/hour matters as Guam — that is, equality with the states.

Before the recommendations of the committee were given effect, DOL explained, “several interested groups” commenced litigation to have the rates set aside so that insular employers might continue to pay wage rates below the national minimum.<sup>33</sup> Concern was voiced that the tuna industry would “substantially shift its operations to foreign locations.” That judicial process was cut short when Congress added language to the pending “Insular Areas Regulation Act” (99<sup>th</sup> Congress) specifically overturning the findings of Special Industry Committee No. 17, retaining the lower wage rates already in effect, and directing that a new committee be appointed that would recommend minimum wage rates less threatening to the insular economic structure.<sup>34</sup>

Two legislative initiatives followed. The 101<sup>st</sup> Congress approved legislation, proposed by Senator James McClure of Idaho, that reduced the evidentiary burden

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<sup>30</sup> U.S. Congress. Senate. Committee on Labor and Public Welfare. *Amending the Fair Labor Standards Act of 1938*. Hearings, 84<sup>th</sup> Cong., 2d Sess., May 8, 1956 ff. Washington, U.S. Govt. Print. Off., 1956. p. 392.

<sup>31</sup> See P.L. 84-1023, August 8, 1956. Although it was conceded that the minimum wage applied to Samoa, industry sought (and was successful) in securing an amnesty for past practice (i.e., for not having paid the minimum wage).

<sup>32</sup> U.S. Department of Labor. Employment Standards Administration. Wage and Hour Division. *Report, Special Industry Committee No. 17 (1986)*, p. 15.

<sup>33</sup> U.S. Department of Labor. Employment Standards Administration. Wage and Hour Division. *Various Industries in American Samoa: An Economic Report, 1987*. March 1987. p. 53-54.

<sup>34</sup> *Federal Register*, June 20, 1986, p. 22517-22518; and *Congressional Record*, August 1, 1986, p. 18612, 18617-18618, 18624, and August 9, 1986, p. 20392-20397.

upon employers in Samoa who seek to demonstrate an inability to pay at least the minimum wage.<sup>35</sup> In the 102<sup>nd</sup> Congress, Representative Austin Murphy of Pennsylvania introduced legislation (H.R. 4011) that would have phased out the industry committee system for American Samoa through a three-year period. The insular minimum would have gone to 75% of the national minimum after the first year, to 90% after the second year, and to the full national minimum after the third year. The Murphy bill died at the close of the 102<sup>nd</sup> Congress. Thus, American Samoa, though covered under the minimum wage provisions of the FLSA, continued to remain under the special industry committee structure.

## American Samoa and the 110<sup>th</sup> Congress

In 2007, a provision was inserted into the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act (H.R. 2206: P.L. 110-28) that repealed the special industry committee provisions of the FLSA and would, over time, impose the full federal minimum wage upon employers in American Samoa. The rate, with "each industry and classification" treated separately, would increase by 50 cents an hour, beginning on the 60<sup>th</sup> day after enactment of H.R. 2206, and would be increased by 50 cents an hour each year until the federal rate had been reached.<sup>36</sup>

## Commonwealth of the Northern Mariana Islands

The Commonwealth of the Northern Mariana Islands (CNMI), associated with the United States since the mid-1970s, had not been covered by the minimum wage provisions of the FLSA: rather, it was governed by its own insular minimum — lower than the FLSA standard. In the 2007 amendments to the FLSA (P.L. 110-28), the federal minimum wage was extended, in steps, to include the CNMI.

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<sup>35</sup> Section 8(b) of the FLSA had provided that the special industry committee would recommend payment of at least the national minimum "unless there is substantial documentary evidence, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years or in the case of employees of public agencies other appropriate information, in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage." In effect, there was a *means test* for an employer seeking exemption from the regular minimum wage on grounds of inability to pay and still to compete. The McClure bill (S. 2930, P.L. 101-583) reduced this evidentiary requirement by deleting this qualifying language and inserting in lieu thereof: "unless there is evidence in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage due to such economic and competitive conditions."

<sup>36</sup> CRS Report RL33754, "Minimum Wage in the 110<sup>th</sup> Congress," by William G. Whittaker. Under P.L. 110-28, the federal minimum wage would increase, over time, to \$7.25 per hour. The new Act states that the insular minimum will be whatever rate may ultimately be set as the national standard. Concerning the functioning of the SIC structure and the implications of the new wage rates for the islands, see CRS Report RL34013, "*The Federal Minimum Wage and American Samoa*," by William G. Whittaker.

## The Covenant of Association Is Established

The Northern Mariana Islands (controlled sequentially by Spain, Germany and Japan) passed to the United States by conquest at the close of World War II. In 1947, following establishment of the United Nations, the Marianas were placed under U.S. control as part of the Trust Territory of the Pacific Islands. During the mid-1970s, a movement for expanded self-determination commenced. This led, ultimately, to the creation and ratification of the *Covenant of Association* between the Mariana Islands and the United States, establishing the current Commonwealth status.

Like Guam and American Samoa, the Northern Mariana Islands are lightly populated (probably, depending upon the criteria, less than 100,000 people), culturally different from the United States, and geographically distant. Most of the population resides on Saipan, but with several other islands (notably, Tinian and Rota) sharing in density. As a Trust Territory, *unlike* Guam or Samoa, the Mariana Islands were not initially thought of as part of the United States, per se. Rather, they seem to have been regarded as in *temporary association with* the United States. Thus, imposition of precise U.S. standards upon the local population — which, in turn, may have meant some substantial disruption of traditional relationships — may not have been a high priority.

Western style jobs had barely begun to develop when the United States came into control of the islands.<sup>37</sup> In 1947, shortly after the close of World War II, the American government stated that the Northern Marianas were still undergoing a transition to a cash economy and lacked both trade unions and traditional wage standards.<sup>38</sup> Again, in 1976, the Department of State reported that “[t]here is no minimum wage law for the Trust Territory” and that “wage rate determination is very much up to each employer.”<sup>39</sup>

With the adoption of the covenant (1975-1976), responsibility for labor standards was divided between the CNMI and the United States. The United States assumed responsibility for overtime pay, child labor regulation, control of industrial homework, and related matters; the CNMI (Saipan) took responsibility for alien labor immigration and the minimum wage. It was also agreed that goods produced in the CNMI would move in commerce under a *Made in America* label.

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<sup>37</sup> U.S. Navy Department. Office of the Chief of Naval Operations. *Handbook on the Trust Territory of the Pacific Islands*. Washington, U.S. Govt. Print Off., 1948. pp. 174 and 178.

<sup>38</sup> U.S. Department of State. 27<sup>th</sup> Annual Report to the United Nations. *Trust Territory of the Pacific Islands, 1974*. Washington, U.S. Govt. Print. Off., 1974. pp. 57-58. During recent years, it seems, American trade unions have begun to organize in the CNMI.

<sup>39</sup> U.S. Department of State. 29<sup>th</sup> Annual Report to the United Nations. *Trust Territory of the Pacific Islands, 1976*. Washington, U.S. Govt. Print. Off., 1976. p. 72. The institutional evolution of labor standards regulation, if any, in the islands during the American period seems obscure. The Department of the Interior advises that any records for the period prior to the adoption of the covenant (i.e., 1945-1976) have been retired to the National Archives. That any system of labor standards was developed for the islands during the Trust period is not immediately apparent.

The US-DOL does not appear to have moved swiftly to implement its responsibilities. The regional office of US-DOL's Wage and Hour Division in San Francisco had jurisdiction over the Pacific areas. But, there appears to have been no regular US-DOL presence in the CNMI prior to 1986-1987, at which point, the Department commenced an investigation of overtime pay compliance in insular industry — an aspect of labor standards protections over which the US-DOL had continuing jurisdiction.

## New Industrial Growth and Its Aftermath

By the 1980s, a garment industry had developed in the CNMI, based largely, it appears, upon three factors: (1) an initial minimum wage then about \$2.15 per hour, substantially below that required by the FLSA, though it may not have extended to many workers; (2) importation of alien non-immigrant contract workers, many from China, who came to be employed in the insular garment factories; and (3) the capacity to move CNMI production in commerce, for tariff purposes, as *Made in America*. Quickly, the insular population grew, with non-citizen alien workers a significant proportion of the total.

The system overall, some suggested, seems to have led to abuse of workers while raising the image of “sweatshop” conditions. Because of concerns about labor practices (with other matters), extensive hearings were conducted by a subcommittee of the Committee on Interior and Insular Affairs in 1992 and again in 1995.<sup>40</sup>

The information developed through the several hearings was contentious. Representative Ron de Lugo of the Virgin Islands, chairman of the House Subcommittee on Insular and International Affairs, estimated that half of the 45,000 people in the CNMI in 1992 were “temporary alien workers.” He stated that the insular garment industry had grown from “a \$5 million volume in 1985 to over \$250 million in 1991.” Gradually, the US-DOL had become involved. In 1991-1992, de Lugo stated, the US-DOL had levied a series of fines against CNMI garment manufacturers: “\$500,000 to settle criminal charges related to the alleged forced kickbacks” of wages, “\$560,000 in fines” against employers “for what an official called ‘appalling living and working conditions,’” and “\$9 million to settle the underpayment of wages” charge.<sup>41</sup>

In 1998, the focus shifted to the Senate where hearings were conducted by the Committee on Energy and Natural Resources. Once again, concerns were voiced about unfair and abusive labor practices in the CNMI. Chaired jointly by Senators Frank Murkowski of Alaska and Daniel Akaka of Hawaii, the hearing took up

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<sup>40</sup> See U.S. Congress. House. Committee on Interior and Insular Affairs. Subcommittee on Insular and International Affairs, *Northern Mariana Islands' Garment Industry*. 102<sup>nd</sup> Cong., 2<sup>nd</sup> Sess., July 30, 1992. Washington, U.S. Govt. Print Office, 1992 (cited, hereafter, as U.S. House, Insular Affairs, 1992); and U.S. Congress. House. Committee on Resources. Subcommittee on Native American and Insular Affairs, *Impact of Contract with America on the Territories*. Hearings on H.R. 602, 104<sup>th</sup> Cong., 1<sup>st</sup> Sess., January 31, 1995. Washington, U.S. Govt. Print. Off., 1995.

<sup>41</sup> U.S. House, Insular Affairs, 1992, pp. 4-7.

imposition of “the federal minimum wage and federal immigration laws” with respect to the CNMI. Senator Murkowski noted that the Committee had under consideration the imposition of “a new 50% U.S. labor requirement on textiles and apparel manufactured in the Marianas for eligibility to use the so-called ‘Made in America’ label or receive duty-free access into the U.S. customs territory.”<sup>42</sup> But, nothing materialized.

There had, for a small insular jurisdiction, been a significant growth in population. The Senate Committee reported that from about 15,000 in 1976, the Marianas population had grown to more than 60,000 in 1998. It estimated the proportions as follows: a resident population of about 24,000; about 28,000 alien workers; and, perhaps, about 10,000 illegal aliens.<sup>43</sup> At the same time, unemployment was said to be about 7.1% overall — but with significant differences between alien workers (a lower rate) and resident islanders, suggesting that jobs were either too poorly paid to attract local workers or, conversely, that *guest workers* were out-bidding natives for the available work. Anticipating reform, some suggested the need for a ‘special industry committee’ as was utilized in American Samoa to sort through work opportunities and to assign wage rates.<sup>44</sup> The committee’s suggestion was not followed.

## Legislative Redress?

Through the past several Congresses, the issue has resurfaced but without solution. In the 109<sup>th</sup> Congress, Representative George Miller of California introduced general legislation dealing with labeling (use of the concept “Made in USA”), minimum wages, applicability of immigration law to the CNMI, and mandating, among other things, certain studies of insular conditions. The bill was referred to the Committee on Resources and to the Committee on Ways and Means; but, in neither case was action taken on the referral. Meanwhile, other legislative proposals, focusing largely upon a minimum wage increase but with CNMI components, were introduced; but, as with the Miller bill, they were not acted upon.<sup>45</sup>

In the 110<sup>th</sup> Congress, George Miller became chair of the Committee on Education and Labor. Targeted for immediate action was H.R. 2, the Fair Minimum Wage Act of 2007. The bill (with some 222 cosponsors) had two provisions: (1) to

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<sup>42</sup> U.S. Congress. Senate. Committee on Energy and Natural Resources. *Northern Mariana Islands*. Hearings on S. 1100 and S. 1275, 105<sup>th</sup> Cong., 2<sup>nd</sup> Sess., March 31, 1998. Washington, U.S. Govt. Print. Off., 1998. p. 1. The Committee had conducted an earlier hearing, *Insular Development Act of 1995*. Hearings on S. 638, 104<sup>th</sup> Cong., 1<sup>st</sup> Sess., 1995. Washington, U.S. Govt. Print Off., 1995.

<sup>43</sup> Population figures are estimates, taken from hearings and related sources.

<sup>44</sup> U.S. Congress. Senate. Committee on Energy and Natural Resources. *Northern Mariana Islands Covenant Implementation Act. Report together with additional views to accompany S. 1275*. S.Rept. 105-201, 105<sup>th</sup> Cong., 2<sup>nd</sup> Sess., Washington, U.S. Govt. Print. Off., 1998. 34 p.

<sup>45</sup> See, for example: H.R. 2429 (George Miller), H.R. 3413 (Boehlert), H.R. 5787 (Boehlert), S. 1062 (Kennedy), and S. 2357 (Kennedy).

raise the federal minimum wage, in steps, to \$7.25 per hour, and (2) to render the federal minimum wage applicable to the CNMI through a series of increases to take place over several years.

On January 10, 2007, H.R. 2 was called up in the House and, as a clean minimum wage bill, was adopted on a vote of 315 yeas to 116 nays. The measure was promptly referred to the Senate where it was adopted (94 yeas to 3 nays). But, in the Senate, a series of revenue-oriented proposals (which might normally have come from the House) were added, posing a procedural problem. For the moment, nothing further happened. Then, two other bills arrived from the House. H.R. 976 had come from the Committee on Ways and Means and, though without a minimum wage component, did provide revenue measures that could have been added to H.R. 2 had the Senate chosen to do so. A second bill, H.R. 1591, dealt with funding levels and timetables for the conflict in the Middle East, and with other provisions, some of them domestic. Though contentious, the bill was promptly approved by Congress, but the measure was vetoed by the President, and the veto was sustained.

Then, in May of 2007, a provision was inserted into the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act (H.R. 2206, P.L. 110-28) that would preempt the Covenant of Association by establishing the federal minimum wage as applicable, over time, to the CNMI. As signed into law, the new statute mandates an increase in the insular minimum wage by 50 cents an hour 60 days after enactment, with an additional 50 cents an hour increase each year until the level of the federal minimum wage has been reached. Thereafter, the insular and federal rates would be coequal and would rise or fall together.<sup>46</sup>

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<sup>46</sup> CRS Report RL33754, *Minimum Wage in the 110<sup>th</sup> Congress*, by William G. Whittaker. In the interim, it appears, the movement of the garment industry into the CNMI has retreated with various factories closing and some out-migration following. As enacted, H.R. 2206 provides for economic studies of conditions in American Samoa and in the Commonwealth of the Northern Mariana Islands.