“Moments Are the Elements of Profit”

Overtime and the Deregulation of Working Hours Under the Fair Labor Standards Act

Marc Linder

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At a time when millions of workers are being compelled to work long overtime hours without the right to refuse except at the risk of losing their livelihood, and Congress is seriously considering employer demands for longer workweeks without overtime pay, "Moments Are the Elements of Profit": Overtime and the Deregulation of Working Hours Under the Fair Labor Standards Act offers the most detailed analysis ever devoted to the federal overtime law. To place the 1938 statute in perspective, the book presents a history of overtime regulation before that law's enactment and emphasizes the crucial difference between overtime laws—like the U.S. national wage and hour law—which permit employers to require their employees to work unlimited hours provided they pay time and a half for weekly hours beyond 40, and maximum hours laws, which prohibit employment beyond a fixed number of hours. The book also documents labor's failure, in the face of adamant employer opposition, to win passage of state laws entitling workers to refuse to work overtime. Other chapters explain how firms have avoided paying low-level employees overtime wages by labeling them "exempt" managers, and how Congress, after having watered down an already weak labor standard in the late 1940s, more recently relieved many small retail and service firms of the duty to pay overtime.

Marc Linder is professor of labor law at the University of Iowa, where he has taught since 1990. For many years he has also represented migrant farm workers on behalf of Texas Rural Legal Aid. His numerous books and articles on the subject prompted the Michigan Law Review to call him "the scholar who has most exhaustively studied the Fair Labor Standards Act...and related legislation." Among his books are Void Where Prohibited: Rest Breaks and the Right to Urinate on Company Time (Cornell 1998); Migrant Workers and Minimum Wages: Regulating the Exploitation of Agricultural Labor in the United States (Westview 1992); and The Employment Relationship in Anglo-American Law: A Historical Perspective (Greenwood 1989).

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