

The autocratically flexible workplace : a history of overtime regulation in the United States / Marc Linder.

Linder, Marc.

Iowa City, Iowa ; Fanpihua Press, 2002.

<http://hdl.handle.net/2027/mdp.39015066123715>

HathiTrust



www.hathitrust.org

Creative Commons Attribution-NonCommercial-NoDerivatives

http://www.hathitrust.org/access_use#cc-by-nc-nd

Protected by copyright law. You must attribute this work in the manner specified by the author or licensor (but not in any way that suggests that they endorse you or your use of the work). Only verbatim copies of this work may be made, distributed, displayed, and performed, not derivative works based upon it. Copies that are made may only be used for non-commercial purposes.

GRAD
HD
5111
. U5
L56
2002

TOCRAATICALLY FLEXIBLE WORKPLACE

A History of Overtime Regulation in the United States



Marc Linder

Original from
UNIVERSITY OF MICHIGAN



Digitized by Google



THE AUTOCRATICALLY FLEXIBLE WORKPLACE



THE AUTOCRATICALLY FLEXIBLE WORKPLACE

A HISTORY OF OVERTIME REGULATION IN THE UNITED STATES

Marc Linder

Fānpìhuà Press
Iowa City
2002

Digitized by Google

Original from
UNIVERSITY OF MICHIGAN

HD
5111
.U5
L56
2002

Copyright © 2002 by Marc Linder
All rights reserved
Printed in the United States of America

Cover illustration: Ralph Reichhold, "The Great Puzzle!"
The Pittsburgh Press, Dec. 16, 1937, at 16, cols. 4-7, with
permission of the *Pittsburgh Press-Gazette*. The cartoons
by Ralph Reichhold, "Out of Order!" and "Just About
Washed Up!" appeared in *The Pittsburgh Press* on Dec. 1,
1937, at 14, col. 4-7 and Dec. 6, 1937, at 14, col. 4-7, and are
reprinted between pages 150 and 151 with permission of the
Pittsburgh Post-Gazette.

Suggested Library of Congress Cataloging
Linder, Marc, 1946—

The Autocratically flexible workplace:
A History of overtime regulation in the
United States/by Marc Linder.

viii, 532; 23 cm.

Includes bibliographical references and index

ISBN 0-9673899-9-2

1. Overtime--United States. 2. Hours of labor--laws and legislation--United
States--history. 3. United States. Fair Labor Standards Act of 1938.

HD5111.U5 L56 2002

331.2572—dc21 Library of Congress Preassigned Control Number: 2002105994

CRFD

1469732

GIFT

28/09/02

Great labour...continued for several days together, is in most men naturally followed by a great desire of relaxation, which if not restrained by force or by some strong necessity, is almost irresistible. It is the call of nature, which requires to be relieved.... If it is not complied with, the consequences are often dangerous, and sometimes fatal, and such as almost always, sooner or later, bring on the peculiar infirmity of the trade. If masters would always listen to the dictates of reason and humanity, they have frequently occasion rather to moderate, than to animate the application of many of their workmen.

Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*
82 (1937 [1776])

But the workingman misunderstands his own interests as well as his own rights, if he conceives that because his right has a natural priority to that of capital, he can invoke legislation to interfere in the bargain between him and the capitalist.... The legislature cannot take the first step in this direction, without so far subverting the right of individual property, and establishing communism.... As between adult parties, this stepping in to say by statute how many hours a day the laborer shall work, means nothing in his favor, unless it means that he shall get more for less, or that the law shall make a better bargain for him than he can make for himself.

*Report of the Special Commission on the Hours of Labor,
and the Condition and Prospects of the Industrial Classes* 29, 31
([Mass.] House No. 98, 1866)

Contents

<i>Preface</i>	vii
<i>Acknowledgments</i>	viii

Part I

INTRODUCTION

1	AUTOCRATIC FLEXIBILITY	3
---	------------------------	---

Part II

THEORY AND STRUCTURE OF OVERTIME REGULATION

2	THE STRUGGLE FOR THE NORMAL WORKING DAY: FROM SURPLUS VALUE TO FAMILY VALUES	23
3	THE SELF-CONTRADICTIONS OF AN OVERTIME PENALTY/PREMIUM	41

Part III

MAXIMUM-HOURS LAWS BEFORE THE FAIR LABOR STANDARDS ACT

4	STATE AND FEDERAL MAXIMUM-HOURS REGULATION BEFORE THE FAIR LABOR STANDARDS ACT	59
5	“WE DIDN’T THINK THAT THE LEGISLATURE WOULD BE SO CRAZY”: TERRITORIAL ALASKA’S ABSOLUTE UNIVERSAL EIGHT-HOUR LAW	69
6	MONTANA’S CONSTITUTIONALIZATION OF THE EIGHT-HOUR DAY	124
7	“PENNSYLVANIA OF ALL PLACES”: A SHORT-LIVED LITTLE NEW DEAL MAKES A BIG DEAL OF MAXIMUM-HOURS REGULATION FOR MEN	151

Part IV

THE FAIR LABOR STANDARDS ACT

8	THE LEGISLATIVE HISTORY AND PURPOSES OF THE FLSA OVERTIME COMPENSATION PROVISION	245
---	---	-----

9	EMPLOYERS' STRUGGLE AGAINST STATUTORILY IMPOSED PREMIUM OVERTIME WAGES FOR NON-MINIMUM WAGE WORKERS: 1938-1942	263
10	THE SUPREME COURT SPREADS CONFUSION INSTEAD OF EMPLOYMENT	279
11	WORKERS DURING WORLD WAR II: FROM THE STRUGGLE AGAINST OVERTIME WORK TO THE STRUGGLE FOR OVERTIME PREMIUMS	292
12	ON THE WATERFRONT: OVERTIME ON OVERTIME?	302
13	TAKING CARE OF BUSINESS: CONGRESS CUTS OVERTIME COVERAGE IN 1949	318
14	UNSUCCESSFUL CONGRESSIONAL INITIATIVES TO RAISE THE OVERTIME PREMIUM OR LOWER THE OVERTIME THRESHOLD: THE 1950S TO 1970S	327

Part V

THE RIGHT TO REFUSE

15	STATE LAWS PROHIBITING MANDATORY OVERTIME WORK	357
----	--	-----

Part VI

FOREIGN EXEMPLARS OF "FLEXIBILITY"

16	THE EUROPEAN UNION: UNEMPLOYMENT, SHORTER HOURS, AND MORE OVERTIME WORK	393
17	ONTARIO: A MIRROR FOR THE FUTURE OF HOURS LAW IN THE UNITED STATES?	413

Part VII

CONCLUSION

18	INCREASED VELOCITY OF THROUGHPUT AND AUTOCRATIC FLEXIBILITY	463
	<i>Bibliography</i>	477
	<i>Index</i>	519

Preface

The Autocratically Flexible Workplace: A History of Overtime Regulation in the United States complements, but does not supersede, the author's "*Moments Are the Elements of Profit*": *Overtime and the Deregulation of Working Hours Under the Fair Labor Standards Act* (2000). The two books differ in four major respects. First, chapters 2, 3, and 4 of the earlier book, which deal with specialized aspects of the FLSA (the exclusion from an entitlement to premium overtime compensation of executive employees, of workers engaged in so-called preliminary and post-liminary work activities as a result of the Portal-to-Portal Act of 1947, and of employees of small firms) and comprise about two-thirds of that book, have been entirely omitted. Second, the history of overtime regulation, which takes up the first chapter of the earlier book, has been expanded from about 200 to 475 pages. About 60 percent of the new material encompasses extended explorations of the heretofore hidden histories of the fates of Montana's constitutionalization of the eight-hour day in 1936 (Chapter 6) and Pennsylvania's 44-hour week law of 1937 (Chapter 7)—the closest encounter with a generally applicable prohibition of overtime work the United States has ever known—as well as the comparative analysis of the transformative dilution of Ontario's Employment Standards Act (Chapter 17). As a result, whereas four-fifths of "*Moments Are the Elements of Profit*" is devoted to the FLSA, that regime takes up only one-fourth of *The Autocratically Flexible Workplace*, which is less of a specialist's and labor lawyer's book and more of a social and labor history. Third, three-fifths of the remaining chapters have been supplemented with additional historical material and updates of the most recent statutory and judicial developments; in particular Chapters 1-4, 8, 14-16, and 18 have been significantly revised and expanded. Only Chapter 5, on Alaska's eight-hour law, and Chapters 9-13, dealing with the legislative, administrative, and judicial evolution of the Fair Labor Standards Act from the day it went into effect in 1938 until its first significant postwar amendments in 1949, remain substantively largely unchanged, though they too have undergone revision; they have been retained for the sake of the continuity of the analysis. Finally, a comprehensive bibliography has been added.

Acknowledgments

Many archivists, librarians, officials, and others were extremely helpful in providing copies of unpublished or otherwise unavailable documents and materials that made possible the analysis of the remarkable legal developments in Alaska (Chapter 5), Montana (Chapter 6), Pennsylvania (Chapter 7), and the Canadian provinces (Chapters 17-18): Judy Skagerberg, Alaska State Archives, Juneau; John Stewart, chief archivist, Alaska State Archives; Sylvie Savage, Alaska and Polar Regions Archives, Rasmuson Library, University of Alaska Fairbanks; Diane Kodiak, National Archives and Records Administration, Anchorage; Ellie Arguimbau, archivist, Montana Historical Society, Helena; Judy Meadows, State Law Librarian of Montana, Helena; Barbara Mittal, librarian, *Great Falls Tribune*; Fritz Snyder, director, University of Montana Law Library; Randall Tenor, State Library of Pennsylvania, Harrisburg; Jay Craig, Senate Library, Harrisburg; Jonathan Stayer, archivist, Pennsylvania State Archives, Harrisburg; Graeme Moore, program advisor, Employment Standards Branch, Ministry of Skills Development and Labour, Surrey, British Columbia; Suzanne Craig, provincial specialist on hours, Employment Practices Branch, Ontario Ministry of Labour, Toronto; Prof. Judy Fudge, Osgoode Hall Law School, York University, Toronto; David Leaman, worker, Toyota Motor Manufacturing Canada Inc., Cambridge, Ontario; Marianne Rogers, York University Law Library, Toronto; Chris Schenk, research director, Ontario Federation of Labour, Toronto; Ted Tjaden, Bora Laskin Law Library, University of Toronto; and Lee Ann Campbell, employment standards officer, Labour Services Branch, Justice Department, Whitehorse, Yukon Territory. Howell John Harris, Reader in History, University of Durham, generously emailed his notes of the archival materials of the Philadelphia Metal Manufacturers' Association dealing with the 1937 Pennsylvania law. Bob Ramsey of the University of Iowa scanned in the cover image.