

094993

B-114873



REPORT TO THE SUBCOMMITTEE ON
INTERGOVERNMENTAL RELATIONS
AND HUMAN RESOURCES
COMMITTEE ON
GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES

094993

Data Available To Measure Impact
Of Minimum And Overtime Wage
Provisions Of The Fair Labor
Standards Act On Working Parents
Employing Domestic Service
Workers As Babysitters

Department of Labor

BY THE COMPTROLLER GENERAL
OF THE UNITED STATES

MWD-75-75

10 73

JUNE 3, 1975



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-114873

01-18
1-10-75
109

The Honorable L. H. Fountain
Chairman, Subcommittee on
Intergovernmental Relations and Human Resources
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

As your office requested in an August 14, 1974, letter, we have examined the availability of data on the potential impact of the extension of minimum wage and overtime requirements to domestic service workers, under the Fair Labor Standards Amendments of 1974 (Public Law 93-259), on the employment status of the female labor force--in particular working mothers. The letter included a copy of a letter from Congressman William V. Alexander to the Subcommittee, which stated that the section of the act relating to domestic service workers might force working mothers who use domestic workers for babysitting and household work to become unemployed due to their inability to pay the higher wage.

Congressman Alexander also forwarded a May 14, 1974, letter from the Department of Labor informing him that a study was being undertaken of the economic effects of extending the act's coverage to domestic service workers. The results will be reported by Labor's Employment Standards Administration to the Congress in January 1976, in its annual report on the Fair Labor Standards Act. The Congressman requested that an assessment be made now because irreparable damage might be done to the female working force if the Congress waits until 1976 for this data.

Congressman Alexander's office subsequently requested us to (1) determine what information was currently available on child care arrangements for working mothers and (2) summarize our findings and submit a report to your office. This material is presented in appendix I.

The 1974 amendments to the act were reviewed concerning
--their legislative history and proposed and pending
legislation;

- the regulations, policies, and procedures established by the Employment Standards Administration to administer the act's domestic service worker provisions; and
- their impact on domestic service workers as shown by available data and information.

We discussed the matter with Employment Standards Administration officials in the Washington, D.C., headquarters and one area office--Little Rock, Arkansas.

We also made inquiries at the Washington offices of the Bureau of Labor Statistics and the Women's Bureau, Department of Labor; the Bureau of the Census, Department of Commerce; and the Office of Education, Department of Health, Education, and Welfare.

Members of Congress are concerned that extending minimum and overtime wage coverage to domestic workers is adversely affecting the employment opportunities of full-time babysitters and working mothers. Legislation has been proposed in the 94th Congress which would exempt those employed as babysitters from coverage under the act.

The impact of extending the minimum and overtime wage provisions on working parents--particularly working mothers--employing domestic service workers as babysitters cannot now be accurately measured because adequate data is not available at the Employment Standards Administration or elsewhere.

The Employment Standards Administration, assisted by the Census Bureau, is conducting a demographic and economic study of domestic service workers to provide a data base for evaluating the effects of extending coverage to domestic workers under the 1974 amendments to the act.

The Bureau is also conducting a study which will provide updated data on the use of child care facilities and services, including the number of private households regularly using day babysitting services and an estimate of the number of households regularly employing babysitters affected by minimum wage coverage.

However, these studies will not provide adequate information on (1) the impact on working parents employing domestics as babysitters of extending the minimum wage and overtime provisions and (2) their ability to pay the required minimum wage or arrange other child care during the workday.

In January 1975 we and a representative from Congressman Alexander's office discussed this lack of data with officials of Labor, the Employment Standards Administration, and the Census Bureau. Employment Standards Administration officials agreed that impact data on working parents is needed and expressed an interest in conducting a study to secure it as part of the Bureau's Current Population Survey. However, the Employment Standards Administration had no firm plans to undertake such a study.

After our discussion, in January 1975 Congressman Alexander wrote the Secretary of Labor that data on the impact of the domestic worker provisions of the Fair Labor Standards Act is necessary to fully analyze the Nation's economic conditions and employment. In this letter he recommended that, because data is not currently available, the Secretary direct that a study of the impact of these provisions on working parents be undertaken.

In his March 1975 reply the Secretary

- agreed that such impact information is needed but that Labor's first priority will be to complete studies currently underway and others required by the 1974 amendments to the act;
- said additional studies will be made when funds and personnel are available;
- said Labor will determine with the Census Bureau the earliest month a supplemental questionnaire can be added to the Current Population Survey to obtain information on the costs and the best technique to be used; and
- said he would send the Congressman a copy of a questionnaire being developed for the survey and advise him of all future developments regarding the study.

We submitted the information in this report to Labor officials for informal comment and considered their views in preparing the report.

B-114873

As your office agreed we are sending copies of this report to the Secretary of Labor; Congressman Alexander; and the Chairman, Subcommittee on Labor Standards, House Committee on Education and Labor. We plan no further distribution.

Sincerely yours,

Thomas B. Atate

Comptroller General
of the United States

DATA AVAILABLE TO MEASURE IMPACT OF
MINIMUM AND OVERTIME WAGE PROVISIONS OF THE
FAIR LABOR STANDARDS ACT ON WORKING PARENTS
EMPLOYING DOMESTIC SERVICE WORKERS AS BABYSITTERS

BACKGROUND

The Fair Labor Standards Act, as amended, 29 U.S.C. 201 et seq., establishes overtime pay, equal pay, and child labor standards for certain employees. Since passed in 1938, the act has been amended several times to provide coverage for additional employers and employees and to increase the minimum wage for others already covered.

The latest amendments, entitled "The Fair Labor Standards Amendments of 1974," were enacted by Public Law 93-259 dated April 8, 1974, which became effective May 1, 1974. The 1974 amendments, among other things, broadened the definition of businesses subject to the act; revised some exemptions in the act; and extended the minimum wage and overtime provisions to additional nonsupervisory public employees and, for the first time, to domestic service workers--including persons employed in private households as babysitters.

Before the 1974 amendments, the standards generally covered (1) employees engaged individually in interstate or foreign commerce, (2) employees engaged in producing goods for interstate or foreign commerce, and (3) other employees in certain enterprises having employees engaged in handling, selling, or working on goods that have moved in or were produced for interstate or foreign commerce.

The amendments set minimum wage rates for newly covered employees--including domestic service workers employed as babysitters--at \$1.90 an hour beginning May 1, 1974. On January 1, 1975, these rates increased to \$2.00 an hour. Further increases to \$2.20 an hour would be effective on January 1, 1976, and to \$2.30 an hour on January 1, 1977.

Coverage of domestic service
workers employed as babysitters

The 1974 amendments cover any employee working in domestic service in a household if she or he receives \$50 or more in cash wages in a calendar quarter from her or his employers or works more than 8 hours a week in the aggregate in domestic service work for one or more employers. The amendments state

that the covered employees, except live-ins, must be paid at least 1 1/2 times their regular pay rates after working a 40-hour week for a single employer.

The amendments did not define a "domestic service worker"; however, the House and Senate Committee Reports on the amendments 1/ contain the following explanation:

"The term 'domestic service' employees is not defined in the Act.* * * the generally accepted meaning of domestic service relates to services of a household nature performed by an employee in or about a private home of the person by whom he or she is employed. The domestic service must be performed in a private home which is a fixed place of abode of an individual or family.* * *"

"Generally, domestic service in and about a private home includes services performed by persons employed as cooks, butlers, valets, maids, housekeepers, governesses, janitors, laundresses, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use. The regulations issued under the Social Security Act also include babysitters."

The amendments exempt live-in domestic service employees from the overtime provisions of the act and exempt from both the minimum wage and overtime provisions:

"* * * Any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary)."

The Employment Standards Administration is responsible for administering the act and has published regulations in the Federal Register of February 20, 1975, which change part 516 and add part 552 of 29 C.F.R. to implement the new minimum wage and overtime pay provisions for domestic workers. The regulations state that the term "babysitting services" shall mean the custodial care and protection--by other than trained personnel, such as a registered nurse--during any part of the 24-hour day of infants or young children in or about

1/See Repts. 93-913 and 93-690, 93d Cong.

the private home in which the infants or young children reside.

The regulations define "casual basis," when applied to babysitting services, as employment which is irregular or intermittent and which is not performed by an individual whose vocation is babysitting. The regulations also state that casual babysitting services may include some housework not related to caring for the children provided that such work is incidental; i.e., it does not exceed 20 percent of the total hours worked on the particular babysitting assignment.

Domestic service workers and working mothers covered under the act

According to the Women's Bureau in the Department of Labor, the employment of mothers, like the employment of all women, has been rising for several decades. From 1940 to March 1972 the number of women in the labor force more than doubled--from 13.8 million to 32.9 million. However, the number of working mothers with children under 18 years old increased more than eightfold--from 1.5 million to 12.7 million. By March 1973 about 13 million mothers with 26.2 million children under 18 years old were working or seeking work.

The Women's Bureau projections for 1985 indicate that 6.6 million mothers aged 20 to 44 with children under age 5 will be in the labor force, or a 32-percent increase between 1975 and 1985.

The Employment Standards Administration estimates that:

- Before the 1974 amendments the act's minimum wage provisions covered about 50.6 million nonsupervisory employees.
- The amendments added 7.4 million to the existing coverage for an increase to about 58.0 million employees in private and public employment. Included in the increase are about 1.3 million domestic service workers.

According to the Bureau of the Census, Department of Commerce, about 500,000 domestic workers are employed as babysitters.

DATA LACKING TO MEASURE IMPACT OF
1974 AMENDMENTS ON WORKING PARENTS
EMPLOYING DOMESTIC SERVICE
WORKERS AS BABYSITTERS

Our review at the Employment Standards Administration and discussions with Bureau of Labor Statistics, Women's Bureau, and Census Bureau officials showed that adequate data to measure the impact of the 1974 amendments on domestic service workers--particularly babysitters--is presently not available.

Data available at the
Employment Standards Administration

The only study on domestic service workers the Employment Standards Administration has completed is a comprehensive study entitled "Private Household Workers." The study began in May 1971 and was completed in August 1974, shortly after the 1974 amendments to the Fair Labor Standards Act became effective. The study's purpose was to provide data necessary for evaluating the feasibility and implications of extending the act's minimum wage and overtime provisions to household service workers.

However, the study (1) was based in part from data compiled by the Census Bureau, under contract to the Employment Standards Administration as part of the Bureau's May 1971 Current Population Survey activities, (2) did not directly focus on the disemployment problem among full-time babysitters and low-salaried working mothers who employ them, which could result if coverage was extended to domestics, and (3) contained no recommendations concerning domestic coverage under the amendments.

According to an Employment Standards Administration official, a copy of the completed study was transmitted to the Congress in August 1974. He said that summaries of the findings and statistics from the study were included in the January 1973 and January 1974 reports on the act--required under section 4(d) of the act--submitted to the Congress.

Some impact data obtained
through enforcement efforts by
Employment Standards Administration
compliance officers

The Employment Standards Administration is accumulating some data on the impact of the amendments through its enforcement efforts.

In May 1974 the Employment Standards Administration's headquarters informed its regional offices that guidelines for programing in the area of domestics were being prepared and, until such guidelines were issued, all complaints alleging violations of the act's minimum wage and overtime provisions with respect to domestics would be serviced. In July 1974 the Employment Standards Administration instructed its regional and area offices to submit reports on the number of complaints received and investigated relating to old and new coverage under the 1974 amendments. Old coverage applies to all employees covered before the amendments. New coverage applies to domestics, public employees, and other employees covered under the amendments.

Reports prepared covering the first 6-month period-- June 21 to December 20, 1974--show that only 257 complaints relating to newly covered domestic employees were received.

In July 1974 the Employment Standards Administration also established procedures for reporting information on the economic effects of the 1974 amendments. These instructions (1) requested field offices to report favorable as well as unfavorable information on the amendments' economic effects and (2) stated that field personnel were not to expend time or resources in seeking out such information but should report only situations that come to their attention.

As of February 6, 1975, 37 reports had been received from Employment Standards Administration offices in the mainland United States. Only three of these concerned the effects on domestic service workers employed as babysitters. An additional 41 reports were received from Puerto Rico, but only 1 covered the effects of paying minimum wages to domestic service workers.

We also inquired about complaints received from domestic service workers in the Little Rock area office in the first quarter of fiscal year 1975. An official there said 10 complaints had been reported relating to minimum wage coverage for domestic workers. Eight of these were investigated and seven resulted in payment of back wages. The eighth case had not been resolved at the time of our inquiry. The official said no information on the economic effects of minimum wage coverage for domestic workers had been reported by or to the area office.

According to Employment Standards Administration officials, because of the large number of households now covered by the extension of the act to domestic workers and because

of the limited number of compliance officers, future enforcement efforts would consist almost entirely of resolving complaints.

Impact data available
from sources other than the
Employment Standards Administration

We held discussions with officials of Labor's Bureau of Labor Statistics and the Women's Bureau who compile statistics on employers and employees. They said their agencies had no plans to compile data on the impact of extending the act to domestic service workers.

We also discussed the matter with Census Bureau officials who compile data through the Bureau's Current Population Survey and Demographic Surveys. One official provided quarterly tabulations for the number of domestic workers employed as babysitters during calendar years 1973 and 1974. According to the official, if the statistics showed that there was no significant trend toward decreasing employment in the babysitter classification since domestic coverage became effective, a survey may not be necessary because the impact of the legislation would appear negligible.

The Census Bureau tabulations proved to be insufficient information to reach a conclusion on the amendments' impact on babysitters employment.

The data showed the number of babysitters in calendar year 1973 ranged from 485,000 in the third quarter to 593,000 in the fourth quarter. In calendar year 1974, the number dropped from 552,000 in the first quarter to 460,000 in the third quarter. However, in the fourth quarter, the number employed increased to 474,000.

DATA BEING OBTAINED ON
WORKING MOTHERS' CHILD CARE ARRANGEMENTS

In 1965 the Children's Bureau of the Department of Health, Education, and Welfare and the Women's Bureau cosponsored the last nationwide study on working mothers' child care arrangements. The Census Bureau conducted the survey as part of its February 1965 Current Population Survey activities.

Data from this study, entitled "Child-Care Arrangements of Working Mothers in the United States," indicated that 6.3 million working mothers had a total of 12.3 million children under 14 years, 3.8 million of whom were under 6 years. This study

also stated that almost half the preschool children were cared for in their homes; not quite a third in someone else's home; a little more than 5 percent in group care centers; and the remainder, under other arrangements. The data also included information on the mothers paying for child care. Of the mothers paying for care in 1965, more than half paid between \$10 and \$19 a week.

The Women's Bureau has not updated the 1965 study and does not have such a study in progress or any plans for one. However, the Office of Child Development, Department of Health, Education, and Welfare, is conducting a nationwide survey to assess consumer attitudes toward day care and to determine the nature and extent of need for day care in representative American communities. The study will include all types of child care uses (babysitters as well as day care centers, nursery schools, kindergartens, etc.).

The survey, titled "National Day Care Consumer Survey," has as a major objective the identification of (1) consumer values with regard to employment and day care, (2) current patterns of day care use, (3) consumer preference patterns, (4) barriers to using day care services, and (5) the criteria parents use in selecting care for their children.

The Office of Education, Department of Health, Education, and Welfare, is surveying early childhood centers, using the February 1975 Current Population Survey. The information gathered will be used to design future preschool assistance. According to Office of Education officials, the data will not provide information on babysitting services.

Census Bureau officials said that, as part of the Bureau's February 1975 Current Population Survey activities, data was collected on child care arrangements which will (1) provide updated data on the use of child care facilities and services, including the number of private households regularly using day babysitting services, and (2) an estimate of the number of households regularly employing babysitters affected by the minimum wage coverage for domestic workers. The data was on the experiences of children ages 3 through 6 and will indicate the number of these children cared for by relatives and paid nonrelatives.

According to an Employment Standards Administration official, data from the Census Bureau survey will help determine the number of households which may be adversely affected by the minimum wage coverage for regular babysitters.

Comparisons of the 1965 data and data from the Bureau's 1975 study should provide information on present and future trends in working mothers' demands for and the availability of various types of child care facilities and arrangements.

However, data on cash wages of working mothers or cash wages paid for child care by working mothers was not included in the Census Bureau survey. Consequently, the survey data cannot be used to measure either the families' abilities to pay babysitters the minimum wage or their compliance with the requirement to pay the minimum wage to regular babysitters in private households.

LEGISLATIVE PROPOSALS TO EXEMPT BABYSITTERS FROM THE ACT

Various bills have been proposed in the Congress that would amend the Fair Labor Standards Act to exempt babysitters from the minimum wage and overtime pay provisions.

For example, H.R. 14765 in the 93d Congress would have amended section 13(a)(15) of the act by deleting the words "on a casual basis" thereby exempting any person employed as a babysitter. Other bills would have amended section 13(a)(15) by adding a new paragraph to exempt from the minimum wage and overtime pay provisions any full-time babysitter if the employee's employer has a gross annual income of \$7,500 or less or if the employer and spouse had a combined gross annual income of \$15,000 or less.

On October 3, 1974, the General Subcommittee on Labor, House Committee on Education and Labor, held hearings on various proposals to amend the act, including H.R. 14765. Various Congressmen testified in support of their bills. The testimony included examples of letters from constituents expressing concern that extending minimum wage coverage to domestic workers would adversely affect the employment opportunities of full-time babysitters and working mothers. Among the data provided were letters stating that the requirement to pay full-time babysitters about \$400 a month works a severe hardship, which may in many cases result in the unemployment of the working mother and thus the babysitter.

One Congressman testified that the current wage coverage for babysitters created a serious disemployment effect among working mothers and those persons whose primary source of income was full-time babysitting. Another Congressman stated that rural areas generally have inadequate population bases to support day care facilities, yet working mothers cannot afford to pay full-time babysitters the minimum wage required.

H.R. 14765 was favorably reported out by the General Subcommittee in October 1974. However, neither this bill, nor any of the similar bills, was acted on by the full Committee nor by the 93d Congress.

Legislation similar to H.R. 14765 was introduced in the 94th Congress as S. 359.

EMPLOYMENT STANDARDS ADMINISTRATION
STUDY ON IMPACT OF
AMENDMENTS TO FAIR LABOR STANDARDS ACT
ON DOMESTIC WORKERS

The Employment Standards Administration, assisted by the Census Bureau, is conducting a demographic and economic study of domestic service workers to provide a data base for evaluating the effects of extending coverage to domestic workers under the 1974 amendments. The study, however, will not cover the ability of working parents, particularly mothers, to pay minimum and overtime wages required under the amendments and thus show the provisions' effects on working parents.

Section 4(d)(1) of the act requires the Secretary of Labor to submit each January a report on the activities carried out under the act for the preceding year. The report is to include an appraisal and evaluation of minimum wages and overtime coverage established by the act, together with the Secretary's recommendations to the Congress. In making his appraisals, the Secretary is to consider any changes which may have occurred in the cost of living and in productivity, the level of wages in manufacturing, the ability of employers to absorb wage increases, and such other factors as he may deem pertinent.

In fiscal year 1975 the Employment Standards Administration received \$3.3 million through a supplemental appropriation to conduct the studies required by the act and the 1974 amendments, including the evaluation and appraisal required under section 4(d)(1). It has requested \$4.5 million for full-year funding in fiscal year 1976.

As part of its studies under section 4(d)(1), the Employment Standards Administration contracted with the Census Bureau to survey domestic service workers as part of the Bureau's November 1974 Current Population Survey. The survey was to provide information on wages, hours, overtime practices, number of employers, and employee benefits for persons 14 years or older who have been employed by private households or by household service businesses that provide domestic help to private householders.

An Employment Standards Administration official said he expects the survey to provide significant impact data and more accurate estimates of numbers of domestic workers covered by the 1974 amendments. This data should make possible an evaluation of the extension of minimum wage and other provisions to domestics and will be used to appraise the implications of extending coverage to additional domestic workers.

Our review showed that the Current Population Survey will not, however, provide adequate data on the impact of new minimum wage coverage under the act on working parents who regularly use day babysitting services. Thus, no comprehensive evaluation will be possible, from the data obtained in this study, of the working parents' ability to pay the new minimum and overtime wages to babysitters or arrange other child care to remain in the labor force.

CONCLUSIONS

Adequate information is not presently available at the Employment Standards Administration or elsewhere to accurately measure the impact of extending the minimum and overtime wage provisions of the Fair Labor Standards Act to domestic service workers, including babysitters. The Employment Standards Administration believes that:

- The Census Bureau's current survey of the domestic service workforce should provide data on how the act's domestic employee coverage affects the employment of these workers.
- The Bureau's study on preschool child care should help determine the number of families using regular babysitting services which are affected by the act's coverage of domestic workers.

However, these studies will not provide adequate data on the impact of extending the minimum wage and overtime provisions to domestic service workers employed as babysitters and the ability of the working parents to pay the required minimum wage or arrange other child care during the workday. Although Labor has expressed an interest in conducting such a study, it had no firm plans to do so.

AGENCY COMMENTS AND ACTIONS

In January 1975 we discussed with Labor, Employment Standards Administration, and Census Bureau officials and a representative from Congressman Alexander's office the

feasibility of Labor's including a study as part of the Bureau's Current Population Survey to determine if the Fair Labor Standards Act coverage of domestic workers adversely affects the working mothers' employment status and their ability to arrange child care during the workday.

Census Bureau officials indicated:

- There are problems in devising a questionnaire to get reliable statistics as part of its survey.
- Any sample in a survey on child care by babysitters would have to be large enough to provide meaningful and reliable statistics on a national basis.
- Sample size would be an important consideration in deciding whether accurate statistics could be obtained.

Employment Standards Administration officials acknowledged that there is a need for information to evaluate the impact of the 1974 amendments to the act on working mothers and that the survey of domestic workers made as part of the November 1974 Current Population Survey was not designed to provide such data. They expressed interest in conducting such a study and agreed that the most practicable way is as part of the Bureau's Current Population Survey. An Employment Standards Administration official said that a study should focus on (1) the ability of working mothers, based on their current earnings, to pay regular babysitters the minimum wage and (2) alternative child care arrangements used by working mothers.

Employment Standards Administration officials suggested that the questions in the Current Population Survey could be phrased in terms of the mother's employment before and after the Fair Labor Standards Act coverage of domestics became effective in May 1974. Those mothers unemployed after the implementation of coverage would be asked to give the reason for their unemployment. The number of women who stated that the higher babysitting costs forced them to leave the labor force would indicate the influence of domestic coverage on working mothers. Employment Standards Administration officials indicated the survey would require approval by Department officials and additional funding.

LABOR AGREES TO MAKE IMPACT STUDY ON WORKING PARENTS

On January 28, 1975, Congressman Alexander again wrote to the Secretary of Labor about the lack of information

on the impact of the domestic worker provision of the Fair Labor Standards Act on both domestic workers and working parents. He expressed concern that Labor had no study planned or in progress on this issue. The Congressman stated that data on the act's impact is needed to fully analyze the Nation's economic and employment situation and stated further:

"I feel that it will be especially important for Congress, in its attempt to assess this provision, to have information on whether parents who previously employed a domestic worker to care for a child in its own home have, as a result of this provision, found it necessary to become unemployed in order to care for the child, or to arrange for the child to be cared for in a place other than the child's home, or to otherwise alter their arrangements for child care."

According to the Congressman, in view of the lack of information available at Labor on these questions, the Secretary should direct that a study of the impact of the act's domestic worker provisions on working parents be undertaken.

In his March 1975 reply, the Secretary:

- Agreed that information on this issue is needed. Labor's immediate problem is one of timing.
- Said Labor is still arranging for the field survey work required by the studies mandated by the 1974 amendments. Consequently, Labor's first priority is to make certain that it has sufficient funds and staff to complete those studies, as well as other periodic studies required by law.
- Said additional studies can be undertaken only if appropriated funds and personnel are available.
- Stated that Labor will determine with the Census Bureau the earliest month a supplemental survey can be scheduled to obtain information on the costs and the best technique to be used. This information will be necessary to draw up a formal agreement between the Bureau and Labor regarding the survey's scope and methodology.

- Stated that Labor is drafting the questionnaire for the survey and, before it is finalized, a copy will be sent to the Congressman for comment.
- Concluded that Labor will advise the Congressman of all future developments regarding the study.