

# New Minimum Wage: HOW WILL IT AFFECT CLUBS?

With the signing of S 2747 (the Fair Labor Standards Amendments of 1974) into law, golf clubs were presented with an new set of payroll problems. These include a new minimum wage scale, new regulations for overtime and new restrictions on student employment.

The original law, the Fair Labor Standards Act of 1938, has been frequently amended since that date; most importantly in 1949, in 1961 and in 1966. Each new set of amendments has brought more and more of the club industry under the act.

Past experience has shown that the act and its amendments are very easy to violate unknowingly. Clubs should reevaluate their employment and payroll practices in the light of the new amendments in order to save dollars in the future; even an unintentional violation can bring severe penalties.

## WHO IS COVERED?

*You were covered under the 1961 amendments* if your club's gross income was over one million dollars or if your club was engaged in interstate commerce. Further, if any individual employee was engaged in producing goods, transporting them across state lines or communicating with non-resident members living in other states, that person was considered to be engaged in interstate commerce and was covered whether or not the club was subject to the law.

*Clubs were covered by the 1966 amendments* if they grossed between \$250,000 and one million dollars, whether or not they were engaged in commerce.

*New dollar volume coverage.* The 1974 amendments set new dollar volume ceilings for clubs grossing less than \$250,000 as follows: 1) Effective January 1, 1975, the ceilings are reduced to \$225,000; 2) effective January 1, 1976, the ceilings are reduced from \$225,000 to \$200,000, and 3) effective January 1, 1977, the dollar volume exemption will be repealed.

## WHAT IS GROSS INCOME?

The Wage and Hour Division of the

This economic broadside fired from Washington promises new burdens on the already swollen club labor budget

by KEN EMERSON

EXECUTIVE DIRECTOR  
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Department of Labor has defined a club's gross income as including the following: initiation fees; direct charges for use of club facilities; food and beverage sales or charges; athletic or sporting rental fees; lodging and valet charges; membership dues and assessments paid as a condition of continued membership, and fees paid by members to club professionals, whether or not accounted for to the club.

It should be noted that under this definition golf lessons and golf shop sales must be included in the club's gross income, even though they may not be directly reported to the club.

## MINIMUM WAGE RATES

Those clubs covered by the 1961 amendments to the Fair Labor Standards Act will increase minimum wages on the following scale: 1) to \$2 an hour after May 1, 1974; 2) to \$2.10 an hour beginning January 1, 1975, and 3) to \$2.30 an hour beginning January 1, 1976.

Those clubs covered by the 1966 and 1974 FLSA Amendments will be subject to increases on the following scale: 1) \$1.90 an hour after May 1, 1974; 2) \$2 an hour beginning January 1, 1975; 3) \$2.20 an hour beginning January 1, 1976, and 4) \$2.30 an hour beginning January 1, 1977.

## OVERTIME PAY

With one exception, all club employees are covered by Section 7(a) of the law, which requires that clubs pay one and one-half of the regular rate of pay for all hours in excess of 40 per work week. Many clubs, however, have taken advantage of Section 13(b) (8), which exempted the food and beverage

employees of the club from overtime rates.

The 1974 amendments alter this section as follows:

Beginning May 1, 1974, food and beverage employees must be paid time-and-a-half for over 48 hours work in any work week.

Effective one year after that, May 1, 1975, overtime rates shall be paid after 46 hours.

A year later, May 1, 1976, overtime rates must be paid after 44 hours, and the following year, commencing May 1, 1977, the overtime exemption will be repealed entirely.

The "regular rate" of pay upon which overtime is based may be higher than the minimum wage, but it cannot be less. The "regular rate" includes all remuneration except gifts, discretionary bonuses, payments made toward cash profit-sharing or savings plans, payments for unworked time, traveling expenses and like payments, daily or weekly overtime, premium pay when it is equal to time and one half for nonscheduled work days and suggestion awards.

The regular rate for an employee paid solely on an hourly basis is the employee's hourly rate. Not less than one and one-half times this rate must be paid to covered employees after 40 hours of work in a work week.

For the employee who is paid a salary for a specified number of hours a week, a "regular rate" is obtained by dividing the weekly salary by the specified number of hours. One-half this rate is due to the employee for each hour over 40, up to the specified number of hours, after which time one and one-half the regular rate is due.

If a salary is paid as straight time pay for whatever number of hours are worked in a work week, and is large enough to provide pay at or above the minimum wage rate for the longest week reasonably expected to be worked by the employee, the regular rate is obtained by dividing the salary by the total hours worked each week. One-half this rate is due for all hours worked in excess of 40 in the work-week.

continued

## MINIMUM WAGE continued

If a salary is paid on other than the weekly basis, the weekly pay must ordinarily be determined in order to compute the regular rate and the overtime pay. Example: if the salary is paid for half a month, it should be multiplied by 24 and the product divided by 52 to get the weekly equivalent. A monthly salary should be multiplied by 12 and the product divided by 52.

Note: The Fair Labor Standards Act does not require premium pay for Saturday, Sunday or holiday work, as such, or vacation, severance pay or a discharge notice.

### TIPPED EMPLOYEES

New restrictions have been placed on Section 3(m) of the Act, which regulates the amount of tips that may be applied to the minimum wage. Under the new amendments, the law continues to permit tips to count for an amount of up to 50 per cent of the applicable minimum wage rate, but now requires that such employees must be informed by the employer of the provisions of the law and permits the tip credit only when all tips received by such employees are retained by them. The amendment does not, however, prohibit the pooling of tips among employees who have customarily and regularly pooled their tips in the past.

### GOLF PROFESSIONALS

Golf professionals are generally not considered independent contractors of the kind referred to in Section 3(r) by the Department of Labor. Such independent contractors are limited to those who perform related activities for an enterprise as distinguished from those who perform such activities as *participants* in an enterprise.

The golf professional however, will usually qualify for an executive exemption under the law. However, in most cases, his employees, including his assistants, would be covered under the act to the same extent as other employees of the golf club.

### CADDIES

Golf course caddies are usually engaged to serve the needs of particular players for substantial periods of time, and their services are generally directed by, and are of a most immediate benefit to, the player himself. Arrangements vary from player to player

and from club to club, but the player, in one way or another, is expected to pay for the services rendered to him by the caddie. Because of these circumstances and the lack of applicable judicial guidance, the Wage and Hour Division is not presently asserting that caddies are employees of the golf course operator: this is an opinion that could change in the future should circumstances warrant it. However, caddies would not qualify for the exemption in cases where they are engaged by the club to perform such duties as maintaining greens, golf shop, or locker room. In such cases, an employment relationship would be considered to exist, and the operator would have to pay the caddie in accordance with the minimum wage and overtime pay requirements for the hours spent in such activities.

### EQUAL PAY PROVISIONS

Under the equal pay provisions of the act, an employer may not discriminate on the basis of sex by paying employees of one sex at rates lower than he pays employees of the opposite sex, in the same establishment for doing equal work on jobs requiring equal skills, effort and responsibility when the work is performed under similar conditions.

Wherever a state law requires that a woman must be paid daily overtime, the same requirement applies to a man in the same job.

### EMPLOYMENT OF STUDENTS

Section 14 of the Act has been amended by the 1970 law to restrict a club's ability to employ full-time students. The new amendments stipulate that such full-time students may be paid a minimum wage of \$1.60 an hour or 85 per cent of the current minimum wage, whichever is higher. With the exception of vacation periods, full-time students working at the special minimum wage rates must be employed on a part-time basis and cannot work more than 20 hours in any one work week.

In addition to the limitation on individual hours, the amendments also place regulations on the total number of students who may be employed by a club and the total number of student hours worked.

*Clubs employing up to four full-time students.* A club may employ up to four full-time students at the special rates without regard to the proportion

of student hours of employment to the total hours worked by all employees of the club. However, in order to employ even these four students, the club would have to certify to the Secretary of Labor that their employment will not reduce the full-time opportunities of non-student employees.

To employ more than four full-time students, the club must now secure a special certificate from the Department of Labor and adhere to certain restrictions on the total number of student hours worked.

Clubs covered prior to the 1974 amendments can take the greater of the following:

1) Proportion of student hours of employment to the total hours of employment of all employees during the preceding 12 months.

2) The maximum proportion for any corresponding month of student hours of employment to the total hours of employment of all employees at any time before the effective date of the 1974 amendments.

3) A proportion equal to one-tenth of the total hours of employment of all employees in the club.

In the case of a club that has not been covered before the 1974 amendments, it may select one of the following three, whichever is greatest:

1) The proportion of hours of employment of students in the club to the total hours of employment of all employees for the corresponding month of the 12-month period immediately prior to the effective date of the amendments.

2) The proportion of student hours of employment to the total hours of employment of all employees of the club for the corresponding month of the immediately preceding 12-month period.

3) A proportion equal to one-tenth of the total hours of employment of all employees of the club.

### RECORDS

The Fair Labor Standards Act requires that certain records be kept by every employer, but does not spell out any particular form of records. Most of the required information is of the kind that clubs usually keep in ordinary business practices and in complying with other laws and regulations.

Some of the specific record-keeping items required by the regulations are the following: 1) name of employee in

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full; 2) home address, including zip code; 3) date of birth, if under 19; 4) sex and occupation; 5) time of day and day of week on which the employee's work week begins; 6) regular hourly rate of pay in any work week in which the overtime premium is due; 7) daily and weekly hours of work; 8) total daily or weekly straight time earnings; 9) total overtime compensation for the work week; 10) total addition to, or deduction from, wages paid each pay period; 11) total wages paid each pay period, and 12) date of payment and pay period covered by payment.

Further questions on minimum wage may be answered by consulting the Wage and Hour Division of the Department of Labor or by writing the National Club Assn. for its monograph, "The Wage and Hour Law in Private Clubs." □

## CHEF PROBLEM from page 48

eration, told the graduates, "For 20 years I've been hearing that chefs are no longer needed—that all food preparation will be done in factories hundreds of miles away. But the fact is, the demand for trained chefs is greater today than ever before."

His statement was underlined by Vincent Coyle, past president of the Societé des Amis d'Escoffier, who stated, "There has been a dearth of club chefs over the years. Although not everyone can become a master chef, there will be a need for several thousand new personnel and hundreds of chefs each year for the next 10 years."

The smiling faces of the graduates reflected their pleasure in being among the world's most sought-after professionals. Their predecessors have chosen positions in country clubs, restaurants, vocational schools, private service—a few even opened their own restaurants and clubs. Many, of course, have stayed at The Greenbrier and are now helping conduct the training program. None, as far as The Greenbrier can determine, are unemployed.

The waiting list for applicants is just about as long as the waiting list for graduates, but The Greenbrier Culinary Apprentice Training Program is alive and well in West Virginia. You might try them the next time your club dining room needs a good chef. Their menus might cause your customers to sing Hallelujah. □