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By Opinion Committee at 8:35 am, Nov 16, 2022



RQ-0487-KP

FILE# ML-49198-22

I.D.# 49198

STATE OF TEXAS
HOUSE OF REPRESENTATIVES

WILL METCALF

The Honorable Ken Paxton
Attorney General, State of Texas
P.O. Box 12548
Austin, TX 78711-2548

November 15, 2022

Attorney General Paxton:

I write this letter to request a formal opinion from the Office of the Attorney General regarding the applicability of Texas's minimum wage law to minor league baseball players when playing baseball for one of eight (8) minor league teams in the State of Texas.¹

I am seeking an opinion confirming that minor league baseball players are exempt from Texas's minimum wage requirements for two independent reasons: (i) the Save America's Pastime Act ("SAPA") under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 213(a)(19), exempts minor league baseball players from coverage under Texas law (Tex. Code Ann. § 62.151); and (ii) the seasonal amusement or recreational establishment exemption (the "seasonal exemption") (Tex. Code Ann. § 62.158), also exempts minor league baseball players.

A. Minor League Baseball Players Are "Covered By" The FLSA and SAPA.

I am first requesting an opinion from your Office that minor league baseball players are exempt from Texas's minimum wage requirements because they are "covered by" the FLSA through SAPA. Specifically, Section 62.151 of the Texas Code (hereafter, the "Texas Exemption") provides that Texas's minimum wage laws "do **not** apply to a person **covered by** the Fair Labor Standards Act." Tex. Code. Ann. § 62.151 (emphasis added). The Texas legislature's desire is to have Texas law not conflict with employees "covered by" the FLSA. Accordingly, pursuant to the Texas Exemption, if an individual is covered or regulated by the FLSA – which includes any applicable FLSA exemptions, regardless of when the exemption came into effect – the FLSA applies with respect to the payment of minimum wage (and overtime, when applicable), not Texas law.

¹ The minor league teams in Texas are the Sugar Land Space Cowboys and Corpus Christi Hooks (affiliated with the Houston Astros), the Round Rock Express and Frisco RoughRiders (affiliated with the Texas Rangers), the Amarillo Sod Poodles (affiliated with the Arizona Diamondbacks), the Midland RockHounds (affiliated with the Oakland Athletics), and the El Paso Chihuahuas and San Antonio Missions (affiliated with the San Diego Padres).

On March 23, 2018, Congress passed an amendment to the FLSA called SAPA, which provides that minor league baseball players who are paid at least the federal minimum wage (which is currently the same as Texas's minimum wage) for at least 40 hours each week during the Championship Season, which is the industry term for the regular season that runs from April to September each year, are otherwise exempt from the FLSA's minimum wage and overtime requirements for baseball-related activities performed throughout the year. Pursuant to SAPA, minor league baseball players are entitled to federal minimum wage for at least a 40-hour workweek during the Championship Season in Texas regardless of the number of hours spent on baseball-related activities. Minor league baseball players are, therefore, "covered by" the FLSA, as they are ensured at least minimum wage for a 40-hour workweek when performing baseball activities in Texas.

An opinion from your Office confirming that minor league baseball players fall within the Texas Exemption because they are "covered by" the FLSA under SAPA would provide useful clarity to the baseball industry and to the five (5) MLB Clubs who have a total of eight (8) minor league affiliates in Texas.

B. Minor League Baseball Players Are Also Exempt From Texas's Wage Requirements Pursuant To The Seasonal Amusement Or Recreational Establishment Exemption.

Additionally, I am seeking an opinion confirming that even if minor league baseball players are not "covered by" the FLSA due to SAPA, they are nonetheless covered by the seasonal exemption and exempt from Texas's minimum wage requirements.

The seasonal exemption under Texas law provides, in relevant part, as follows: "An employer is exempt from [Texas's minimum wage laws] with respect to employment in an amusement or recreational establishment that ... does not operate for more than seven months in a calendar year[.]" See Tex. Labor Code Ann. § 62.158. The seasonal exemption under Texas law is identical to the seasonal exemption under the FLSA, 29 U.S.C. § 213(a)(3), and, therefore, federal regulations interpreting the FLSA's seasonal exemption are highly instructive in analyzing the Texas exemption.

The threshold issue under the seasonal exemption is defining the scope of the establishment. It is well-settled that establishment is a "distinct, physical place of business." 29 C.F.R. § 779.23. Here, the Clubs' minor league baseball stadiums in Texas are at distinct, physical locations that are individual establishments for purposes of the exemption. Next, the establishment must be "amusement or recreational" in nature, which is satisfied if the establishment is frequented by the public for its amusement or recreation. 29 C.F.R. § 779.385. Here, minor league baseball games played at stadiums in Texas where tickets are sold to the public (as reflected in the attached team website excerpts) are quintessential sports events frequented by the public for their amusement that fall within the scope of the exemption.

Finally, the establishments are seasonal if they do "not operate for more than seven months in a calendar year." Tex. Labor Code Ann. § 62.158. The 2022 season for the Texas-based minor league baseball teams began on April 5 or 8, and ended on September 18 or 28 – for

a total of six months. Accordingly, minor league baseball players are additionally covered by the Texas seasonal exemption.

Given the significant popularity of minor league baseball activities in Texas, a formal opinion from your Office confirming that minor league baseball players fall outside the ambit of Texas's minimum wage laws for both reasons addressed above, would provide essential clarity to ensure the continued smooth operation of these teams, which are vital sources of family-friendly and affordable entertainment to countless Texans and tourists across the State.

Sincerely,



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