

# Minor League Compensation and the Save America's Pastime Act of 2018

BY MATTHEW DURHAM, ESQ.

“BASEBALL IS LIFE. The rest is just details.” To members of the Green Valley High School (Henderson, Nevada) varsity baseball team in the mid-1990s, this wasn't just a catchphrase on a t-shirt; it was gospel. We lived and breathed baseball, and it showed. Between 1993 and 1998, Green Valley won six straight Nevada State Championships in baseball, and no fewer than 15 players from these teams ended up being drafted by a Major League Baseball (MLB) franchise. One of my teammates was drafted 10<sup>th</sup> in the first round, straight out of high school. He, and no doubt all of the other players who were drafted, dreamed of making it to “the Show” and playing baseball for a living. Unfortunately for most of them, the statistics were not in their favor.

Although individuals drafted in the opening rounds of the MLB draft have much better odds of making it to the big leagues than those drafted in later rounds, it is estimated that only 10 percent of all MLB draftees ever achieve their goal of playing for an MLB team. This

situation means that approximately 90 percent of MLB draftees spend their entire professional careers (however long or short they may be) grinding it out with the Albuquerque Isotopes, the Binghamton Rumble Ponies, the Hartford Yard Goats and the other nearly 250 Minor League Baseball teams. To some, simply being paid to play a game they love would seem like a dream come true. But making ends meet can be as daunting a task as making it to the big leagues. The recent amendment to the Fair Labor Standards Act (FLSA) will ensure that it remains that way.

## Minor League Work Hours and Compensation

During the minor league championship season (the regular season and playoffs), players often work between 60 and 70 hours per week. These hours are spent:

1. Participating in mandatory pregame activities, such as stretching, batting practice and fielding practice;
2. Playing games six or seven days a week, with a day off only once every two to three weeks;
3. Performing mandatory strength and conditioning workouts; and
4. Packing for, and traveling to, away games—usually by bus.

For their services, minor leaguers are paid a salary by their affiliated MLB franchise according to a wage structure established by MLB. Until recently, these salaries ranged from \$1,100 per month to an estimated \$2,150 per month. However, players are only entitled to be paid during the championship season, which is, at its longest, approximately five months. The players are not paid for mandatory participation in spring training, off-season workouts or instructional leagues. Thus, many minor league players earn far less than the federal minimum wage and less than the federal poverty level—currently \$12,140 annually for an individual or \$25,100 for a family of four.

## Alleged FLSA Violations

In 2014, former minor leaguers brought a putative class action against MLB, the then-MLB commissioner and several MLB franchises (MLB Defendants), challenging what they contend is the MLB Defendants' exploitation of young players' desires to play baseball for a living, by grossly underpaying them, in violation of federal and state laws. *See Senne v. MLB*, No. 3:14-cv-00608-JCS (N.D. Cal. Feb. 7, 2014). In *Senne*, the plaintiffs—who refer to MLB as a cartel, having a “long, infamous history of labor exploitation dating to its inception”—allege that despite often working 60 to 70 hours per week, most minor leaguers only earn between \$3,000 and \$7,500 for the entire year. The plaintiffs contend that while MLB salaries have increased by more than 2,000

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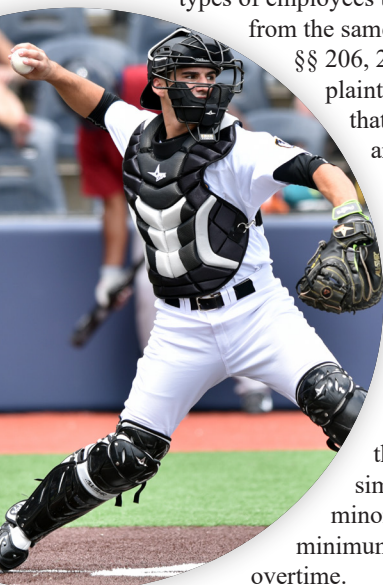
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percent since 1976, minor league salaries have, on average, increased only 75 percent. Meanwhile, inflation has risen by more than 400 percent over that same time period. Thus, according to the plaintiffs, minor-league salaries have effectively declined by 5 percent since 1976.

The plaintiffs' claims in *Senne* are based in part on the FLSA. The FLSA establishes federal minimum wage and overtime requirements, and sets forth the types of employees that are exempt from the same. See 29 U.S.C.

§§ 206, 207, 213. The plaintiffs contend that minor leaguers are covered by the FLSA and that the MLB Defendants violated the same by engaging in a policy and practice of failing to pay them and all similarly-situated minor leaguers minimum wage and overtime.

The MLB Defendants assert, as an affirmative defense, that the FLSA claims are barred by two exemptions from the FLSA. The first exemption is afforded to seasonal amusement or recreational establishments. *Id.* at § 213. Under this exemption, employees of establishments that operate for up to seven months per calendar year, or whose average receipts for any six months of the calendar year are not more than one-third its average receipts for the other six months of the year, are exempt from the FLSA's minimum wage and overtime requirements. *Id.* The second exemption is for those employed in a "bona fide professional capacity." *Id.* However, under the FLSA, such employees must be paid on a salary basis at not less than \$455 a week. Only players at the Triple-A level of Minor League Baseball (the highest of six levels) generally earn more than \$455 per week, and they do so only during the five-month championship season.



## Save America's Pastime Act of 2016

In response to the ongoing *Senne* litigation, and as a result of extensive lobbying by MLB, on June 24, 2016, Congresswoman Cheri Bustos (D-Ill.) and Congressman Brett Guthrie (R-Ky) introduced a bill curiously dubbed the Save America's Pastime Act (2016 SAPA). The stated purpose of the 2016 SAPA was to "clarify" certain requirements under the FLSA with respect to minor-league players. See Save America's Pastime Act, H.R. 5580, 114th Cong. (2016). In reality, however, the purpose of the 2016 SAPA was to exempt such players from the FLSA's minimum wage and overtime requirements. *Id.* at § 2.

Public reaction to the 2016 SAPA was swift and negative, and sports writers did not mince words when expressing their opinions of the act:

- "Despicable 'Save America's Pastime Act' aims to screw minor leaguers" – *The Sporting News*
- "Here's why the Save America's Pastime Act is a river of molten sewage" – *SB Nation*
- "Evil Congressmen Want To Make Living Wage For Minor Leaguers Illegal" – *Deadspin*
- "The 'Save America's Pastime Act' in Congress will do nothing of the sort" – *USA Today*

In response to the public outcry, Congresswoman Bustos withdrew her support of the 2016 SAPA within days of introducing it. Nevertheless, MLB's lobbying efforts persisted, and recently, these efforts paid off.

## Save America's Pastime Act of 2018

On March 23, 2018, the U.S. Senate approved, and President Trump signed into law, a \$1.3 trillion appropriations bill. Tucked away on page 1,967 of the 2,232-page bill was a slightly revised version of the 2016 SAPA (the 2018 SAPA). Whereas the 2016 SAPA would have completely exempted minor-leaguers from the FLSA's minimum wage and overtime requirements, the 2018 SAPA only exempts players working under

a contract that pays minimum wage for a 40-hour workweek, i.e., \$1,160 per month. Specifically, the 2018 SAPA exempts:

any employee employed to play baseball who is compensated pursuant to a contract that provides for a weekly salary for series performed during the league's championship season (but not spring training or the off season) at a rate that is not less than a weekly salary equal to the minimum wage under section 6(a) for a workweek of 40 hours, irrespective of the number of hours the employee devotes to baseball related activities.

Consolidated Appropriations Act, 2018, H.R. 1625, 115<sup>th</sup> Cong. § 201 (2018).

Thus, while minor-leaguers who had been making the minimum \$1,100 per month effectively received a \$60 per month raise, the 2018 SAPA mandated that minor-leaguers are exempt from the FLSA's overtime requirement and from being paid during spring training and during the off-season.

The 2018 SAPA had zero co-sponsors, and Congress passed the bill as part of an unrelated piece of legislation without allowing time for debate or amendments. In so doing, Congress bowed to MLB and undermined the *Senne* plaintiffs' ongoing lawsuit. To be fair, it is unclear whether the *Senne* plaintiffs would have prevailed on their FLSA claims absent the 2018 SAPA; other courts have been split on whether minor league players are exempt, seasonal amusement or recreational employees. However, by passing the 2018 SAPA, Congress essentially put an end to all class-action lawsuits on the issue, and ensured that minor leaguers will continue to effectively be paid below minimum wage.

Ultimately, it is unlikely the 2018 SAPA will negatively impact the number of players who pursue their big league dreams. A select few, like my former teammate, will eventually reach the majors and sign an MLB contract. For the 90 percent who do not, however, their compensation in the minors will effectively continue to be below minimum wage. **NL**



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