Health and Safety vs. Freedom of Contract The Tortured Path of Wage and Hours Limits Through the State Legislatures and the Courts

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The paper examines changes in wage and hour labor regulation between 1898 and 1938. Many see the 1905 Lochner Supreme Court decision striking down hours limits for men as the beginning of 30 years in which labor regulation was stymied by the doctrine of “freedom of contract.” That issue played a role but judges often weighed it against safety issues. As a result, hours limits for men in dangerous industries were found to be constitutional. The debates over minimum wages for women also centered on these issues. These laws passed muster in state supreme courts and initially at the U.S. Supreme Court. In 1923 a majority of Supreme Court judges emphasized freedom of contract in declaring a female minimum wage unconstitutional. Seeing close votes and substantial turnover of judges on the Supreme Court, many states continued promulgating advisory minimums and passed new laws. Ultimately, turnover on the Court and a renewed emphasis on the role of minimum wages in ensuring health and safety of women and children during the Depression led the Court to declare minimums for women constitutional. This opened the door for federal minimum wage legislation for all workers.

**Url:**<https://www.nber.org/papers/w30436>