

## Wage and Hour Division, Labor

§776.0a

### Subpart B—Construction Industry

776.22 Subpart limited to individual employee coverage.

#### ENTERPRISE COVERAGE

776.22a Extension of coverage to employment in certain enterprises.

#### INDIVIDUAL EMPLOYEE COVERAGE IN THE CONSTRUCTION INDUSTRY

776.22b Guiding principles.

776.23 Employment in the construction industry.

776.24 Travel in connection with construction projects.

776.25 Regular and recurring activities as basis of coverage.

776.26 Relationship of the construction work to the covered facility.

776.27 Construction which is related to covered production.

776.28 Covered preparatory activities.

776.29 Instrumentalities and channels of interstate commerce.

776.30 Construction performed on temporarily idle facilities.

AUTHORITY: 52 Stat. 1060, as amended; 29 U.S.C. 201-219.

### Subpart A—General

SOURCE: 15 FR 2925, May 17, 1950, unless otherwise noted.

#### §776.0 Subpart limited to individual employee coverage.

This subpart, which was adopted before the amendments of 1961 and 1966 to the Fair Labor Standards Act, is limited to discussion of general coverage of the Act on the traditional basis of engagement by individual employees “in commerce or in the production of goods for commerce”. The 1961 and 1966 amendments broadened coverage by extending it to other employees on an “enterprise” basis, when “employed in an enterprise engaged in commerce or in the production of goods for commerce” as defined in section 3 (r), (s), of the present Act. Employees covered under the principles discussed in this subpart remain covered under the Act as amended; however, an employee who would not be individually covered under the principles discussed in this subpart may now be subject to the Act if he is employed in a covered enterprise as defined in the amendments. Questions of “enterprise coverage” not

answered in published statements of the Department of Labor may be addressed to the Administrator of the Wage and Hour Division, Department of Labor, Washington, DC 20210 or assistance may be requested from any of the Regional or District Offices of the Division.

[35 FR 5543, Apr. 3, 1970]

#### INDIVIDUAL EMPLOYEE COVERAGE

#### §776.0a Introductory statement.

(a) *Scope and significance of this part.*  
(1) The Fair Labor Standards Act of 1938<sup>1</sup> (hereinafter referred to as the Act), brings within the general coverage of its wage and hours provisions every employee who is “engaged in commerce or in the production of goods for commerce.”<sup>2</sup> What employees are so engaged must be ascertained in the light of the definitions of “commerce”, “goods”, and “produced” which are set forth in the Act as amended by the Fair Labor Standards Amendments of

<sup>1</sup>Pub. L. 718, 75th Cong., 3d sess. (52 Stat. 1060), as amended by the Act of June 26, 1940 (Pub. Res. No. 88, 76th Cong., 3d sess., 54 Stat. 616); by Reorganization Plan No. 2 (60 Stat. 1095), effective July 16, 1946; by the Portal-to-Portal Act of 1947, approved May 14, 1947 (61 Stat. 84); and by the Fair Labor Standards Amendments of 1949, approved October 26, 1949 (Pub. L. 393, 81st Cong., 1st sess., 63 Stat. 910); by Reorganization Plan No. 6 of 1950 (15 FR 3174), effective May 24, 1950; and by the Fair Labor Standards Amendments of 1955, approved August 12, 1955 (Pub. L. 381, 84th Cong., 1st sess., C. 867, 69 Stat. 711).

<sup>2</sup>The requirement of section 6 as to minimum wages is: “Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—” (not less than \$1.00 an hour, except in Puerto Rico and the Virgin Islands to which special provisions apply).

The requirement of section 7 as to maximum hours which an employee may work without receiving extra pay for overtime is: “no employer shall employ any of his employees who is engaged in commerce or in the production of goods for commerce for a workweek longer than forty hours, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.”

1949,<sup>3</sup> giving due regard to authoritative interpretations by the courts and to the legislative history of the Act, as amended. Interpretations of the Administrator of the Wage and Hour Division with respect to this general coverage are set forth in this part to provide “a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it.”<sup>4</sup> These interpretations with respect to the general coverage of the wage and hours provisions of the Act, indicate the construction of the law which the Administrator believes to be correct and which will guide him in the performance of his administrative duties under the Act unless and until he is otherwise directed by authoritative decisions of the courts or concludes, upon reexamination of an interpretation, that it is incorrect.

(2) Under the Portal-to-Portal Act of 1947,<sup>5</sup> interpretations of the Administrator may, under certain circumstances, be controlling in determining the rights and liabilities of employers and employees. The interpretations contained in this bulletin are interpretations on which reliance may be placed as provided in section 10 of the Portal-to-Portal Act, so long as they remain effective and are not modified, amended, rescinded, or determined by judicial authority to be incorrect. However, the omission to discuss a particular problem in this part or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Administrator with respect to such problem or to constitute an administrative interpretation or practice or enforcement policy.

(b) *Exemptions and child labor provisions not discussed.* This part does not deal with the various specific exemp-

tions provided in the statute, under which certain employees engaged in commerce or in the production of goods for commerce and thus within the general coverage of the wage and hours provisions are wholly or partially excluded from the protection of the Act’s minimum-wage and overtime-pay requirements. Some of these exemptions are self-executing; others call for definitions or other action by the Administrator. Regulations and interpretations relating to specific exemptions may be found in other parts of this chapter. Coverage and exemptions under the child labor provisions of the Act are discussed in a separate interpretative bulletin (§§570.101 to 570.121 of this chapter) issued by the Secretary of Labor.

(c) *Earlier interpretations superseded.* All general and specific interpretations issued prior to July 11, 1947, with respect to the general coverage of the wage and hours provisions of the Act were rescinded and withdrawn by §776.0(b) of the general statement on this subject, published in the FEDERAL REGISTER on that date as part 776 of this chapter (12 FR 4583). To the extent that interpretations contained in such general statement or in releases, opinion letters, and other statements issued on or after July 11, 1947, are inconsistent with the provisions of the Fair Labor Standards Amendments of 1949, they do not continue in effect after January 24, 1950.<sup>6</sup> Effective on the date of its publication in the FEDERAL

<sup>6</sup>Section 16(c) of the Fair Labor Standards Amendments of 1949 (63 Stat. 910) provides:

“Any order, regulation, or interpretation of the Administrator of the Wage and Hour Division or of the Secretary of Labor, and any agreement entered into by the Administrator or the Secretary, in effect under the provisions of the Fair Labor Standards Act of 1938, as amended, on the effective date of this Act, shall remain in effect as an order, regulation, interpretation, or agreement of the Administrator or the Secretary, as the case may be, pursuant to this Act, except to the extent that any such order, regulation, interpretation, or agreement may be inconsistent with the provisions of this Act, or may from time to time be amended, modified, or rescinded by the Administrator or the Secretary, as the case may be, in accordance with the provisions of this Act.”

<sup>3</sup>Pub. L. 393, 81st Cong., 1st sess. (63 Stat. 910). These amendments, effective January 25, 1950, leave the existing law unchanged except as to provisions specifically amended and the addition of certain new provisions. Section 3(b) of the Act, defining “commerce”, and section 3(j), defining “produced”, were specifically amended as explained in §§776.13 and 776.17(a) herein.

<sup>4</sup>*Skidmore v. Swift & Co.*, 323 U.S. 134, 138.

<sup>5</sup>Pub. L. 49, 80th Cong., 1st sess. (61 Stat. 84), discussed in part 790 of this chapter.

## Wage and Hour Division, Labor

## §776.2

REGISTER, subpart A of this interpretative bulletin replaces and supersedes the general statement previously published as part 776 of this chapter, which statement is withdrawn. All other administrative rulings, interpretations, practices and enforcement policies relating to the general coverage of the wages and hours provisions of the Act and not withdrawn prior to such date are, to the extent that they are inconsistent with or in conflict with the principles stated in this interpretative bulletin, hereby rescinded and withdrawn.

[15 FR 2925, May 17, 1950, as amended at 21 FR 1448, Mar. 6, 1956. Redesignated at 35 FR 5543, Apr. 3, 1970]

### HOW COVERAGE IS DETERMINED

#### §776.1 General interpretative guides.

The congressional policy under which employees “engaged in commerce or in the production of goods for commerce” are brought within the general coverage of the Act’s wage and hours provisions is stated in section 2 of the Act. This section makes it clear that the congressional power to regulate interstate and foreign commerce is exercised in this Act in order to remedy certain evils, namely, “labor conditions detrimental to the maintenance of the minimum standards of living necessary for health, efficiency, and the general well being of workers” which Congress found “(a) causes commerce and the channels and instrumentalities of commerce to be used to perpetuate such labor conditions among the workers of the several States; (b) burdens commerce and the free flow of goods in commerce; (c) constitutes an unfair method of competition in commerce; (d) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce and (e) interferes with the orderly and fair marketing of goods in commerce.” In carrying out these broad remedial purposes, however, the Congress did not choose to make the scope of the Act co-extensive in all respects with the limits of its power over commerce or to apply it to all activities affecting com-

merce.<sup>7</sup> Congress delimited the area in which the Act operates by providing for certain exceptions and exemptions, and by making wage-hour coverage applicable only to employees who are “engaged in” either “commerce”, as defined in the Act, or “production” of “goods” for such commerce, within the meaning of the Act’s definitions of these terms. The Fair Labor Standards Amendments of 1949 indicate an intention to restrict somewhat the category of employees within the reach of the Act under the former definition of “produced” and to expand to some extent the group covered under the former definition of “commerce.” In his interpretations, the Administrator will endeavor to give effect to both the broad remedial purposes of the Act and the limitations on its application, seeking guidance in his task from the terms of the statute, from authoritative court decisions, and from the legislative history of the Act, as amended.<sup>8</sup>

#### §776.2 Employee basis of coverage.

(a) The coverage of the Act’s wage and hours provisions as described in sections 6 and 7 does not deal in a blanket way with industries as a whole. Thus, in section 6, it is provided that every employer shall pay the statutory

<sup>7</sup> *Kirschbaum v. Walling*, 316 U.S. 517; *Walling v. Jacksonville Paper Co.*, 317 U.S. 564; *10 East 40th St. Bldg. Co. v. Callus*, 325 U.S. 578; *A. H. Phillips, Inc. v. Walling*, 324 U.S. 490; *Fleming v. Hawkeye Pearl Button Co.*, 113 F. 2d 52 (C.A. 8); *Armstrong v. Walling*, 161 F. 2d 515 (C.A. 1); *Bowie v. Gonzalez*, 117 F. 2d 11 (C.A. 1).

<sup>8</sup>Footnote references to some of the relevant court decisions are made for the assistance of readers who may be interested in such decisions.

Footnote reference to the legislative history of the 1949 amendments are made at points in this part where it is believed they may be helpful. References to the *Statement of the Managers on the part of the House*, appended to the Conference Report on the amendments (H. Rept. No. 1453, 81st Cong., 1st sess.) are abbreviated: H. Mgrs. St. 1949, p. —. References to the *Statement of a majority of the Senate Conferees*, 95 Cong. Rec., October 19, 1949 at 15372-15377 are abbreviated: Sen. St., 1949 Cong. Rec. References to the Congressional Record are to the 1949 daily issues, the permanent volumes being unavailable at the time this part was prepared.