

Wage and Hour Division, Labor

§776.15

ENGAGING IN "THE PRODUCTION OF GOODS FOR COMMERCE"

§776.14 Elements of "production" coverage.

Sections 6 and 7 of the Act, as has been noted, cover not only employees who are engaged "in commerce" as explained above, but also "each" and "any" employee who is engaged in the "production" of "goods" for "commerce". What employees are so engaged can be determined only by references to the very comprehensive definitions which Congress has supplied to make clear what is meant by "production", by "goods," and by "commerce" as those words are used in sections 6 and 7. In the light of these definitions, there are three interrelated elements of coverage to be considered in determining whether an employee is engaged in the production of goods for commerce: (a) There must be "production"; (b) such production must be of "goods"; (c) such production of goods must be "for commerce"; all within the meaning of the Act.⁵¹ The three elements of "production" coverage are discussed in order in the sections following.

§776.15 "Production."

(a) *The statutory provisions.* The activities constituting "production" within the meaning of the phrase "engaged in * * * production of goods for commerce" are defined in the Act⁵² as follows:

Produced means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.

⁵¹ These elements need not be considered if the employee would be covered in any event because engaged "in commerce" under the principles discussed in preceding sections of this part.

⁵² Act, section 3(j). This definition is also applicable in determining coverage of the child labor provisions of the Act. See part 4 of this title.

The Act bars from interstate commerce "any" goods in the production of which "any" employee was employed in violation of the minimum-wage or overtime-pay provisions,⁵³ and provides that in determining, for purposes of this provision, whether an employee was employed in the production of such goods:

* * * proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods.⁵⁴

(b) *General scope of "production" coverage.* The statutory provisions quoted in paragraph (a) of this section, show that for purposes of the Act, wherever goods are being produced for interstate or foreign commerce, the employees who are covered as "engaged in the production" of such goods, include, in general, all those whose work may fairly be said to be a part of their employer's production of such goods,⁵⁵ and include

⁵³ Act, section 15(a)(1). The only exceptions are stated in the section itself, which provides that "it shall be unlawful for any person—(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6 or section 7, or in violation of any regulation or order of the Administrator issued under section 14; except that no provision of this Act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this Act shall excuse any common carrier from its obligation to accept any goods for transportation; and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of the Act, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful;"

⁵⁴ Act, sec. 15(b).

⁵⁵ *Borden Co. v. Borella*, 325 U.S. 679; *Armour & Co. v. Wantock*, 323 U.S. 126. See also paragraph (c) of this section.