

§776.25

§776.25 Regular and recurring activities as basis of coverage.

Regular and recurring may mean a very small amount and is not to be determined by volume or percentages. Coverage depends on the character rather than the volume of the employee's activities. For example, if an employee in the course of his duties regularly engages in covered work even though the covered work constitutes only a small part of his duties, he would be covered in any week when he performs such covered work.¹⁴

§776.26 Relationship of the construction work to the covered facility.

Unless the construction work is physically or functionally integrated or closely identified with an existing covered facility it is not regarded as covered construction because it is not closely enough related to or integrated with the production of goods for commerce or the engagement in commerce. For this reason the erection, maintenance or repair of dwellings, apartments, hotels, churches and schools are not covered projects.¹⁵ Similarly the construction of a separate, wholly new, factory building, not constructed as an integral part or as an improvement of an existing covered production plant, is not covered (Cf. §776.27(c)). Coverage of any construction work, whether new or repair work, depends upon how closely integrated it is with, and how essential it is to the functioning of, existing covered facilities. Neither the mere fact that the construction is "new construction" nor the fact that it is physically separated from an existing covered plant, is determinative. Moreover, the court decisions make it clear that the construction project itself need not be actually employed in commerce or in the production of goods for commerce in order to be covered.¹⁶ Such factors may

¹⁴ *Walling v. Jacksonville Paper Co.*, ante; *Mabee v. White Plains Publishing Co.*, 327 U.S. 178.

¹⁵ Cf. §776.18(b).

¹⁶ *Mitchell v. Vollmer*, ante; *Bennett v. V. P. Loftis Co.*, ante; *Mitchell v. Chambers Const. Co.*, 214 F. (2d) 515 (C.A. 10); *Walling v. McCrady Const. Co.*, ante; *Tobin v. Pennington-Winter Const. Co.*, 198 F. (2d) 334 (C.A. 5), certiorari denied, 345 U.S. 915.

29 CFR Ch. V (7-1-04 Edition)

be considered in determining whether as a practical matter the work is directly and vitally related to the functioning of the covered facility but would not be decisive.

§776.27 Construction which is related to covered production.

(a) *Existing production establishments.*
(1) Covered production facilities within the concept of the Act include mines, oil wells, banks, manufacturing, packing and processing plants, filtration, sewage treatment, electric power and water plants, shipyards, warehouses in which goods are broken down, packed or handled preparatory to being sent in interstate commerce, and similar establishments.

(2) The repair or maintenance of a covered production unit is essential for its continued operation and has a close and immediate tie with the production of goods for commerce.¹⁷ The Act is also applicable to other construction which is an integral part of a covered production unit, such as the replacement, enlargement, reconstruction, extension or other improvement of the premises, the buildings, the machinery, tools and dies and other equipment. Functionally such work is like maintenance and repair and is necessary for the continued, efficient and effective operation of the facility as a unit. Thus the construction of new appurtenances of a covered production establishment such as parking aprons, access roads, railroad spurs, drainage ditches, storm, waste and sanitary sewers or adjacent integrated buildings is subject to the Act. Similarly, the Act applies to the installation of telephone, electric, gas and water lines, machinery and other equipment on the premises of such a facility.

(3) On the other hand, the production and furnishings, within the State, of construction materials, such as sand, gravel, brick and other construction materials produced for general local use, is not covered even if the producer also supplies such materials to construction companies which use them within the State in the repair, maintenance or improvement of facilities for

¹⁷ *Kirschbaum Co. v. Walling*, ante; *Walling v. McCrady Const. Co.*, ante.