

§776.28

the interstate movement of goods or persons.

(4) This does not mean, however, that in every case where employees produce such materials which are used within the State in the maintenance, repair, or reconstruction of an instrumentality of commerce, the production of such materials is necessarily considered as production “for” commerce. A material supply company may be engaged in an independent business which is essentially local in nature, selling its materials to the usual miscellany of local customers without any particular intent or purpose of supplying materials for the maintenance, repair, or reconstruction of instrumentalities of commerce, and without any substantial portion of its business being directed to such specific uses. Employees of such an “essentially local business” are not covered by the Act merely because as an incident to its essentially local business, the company, on occasion, happens to produce or supply some materials which are used within the State to meet the needs of instrumentalities of commerce.²⁵

§776.28 Covered preparatory activities.

(a) *Before production begins.* (1) The United States Supreme Court has held that the Act is applicable to employees of a company which was engaged in preliminary oil well drilling, even though the holes were drilled to a specified depth which was short of where the oil was expected to be found.²⁶ The Act would also apply to drilling operations even though no oil was discovered.²⁷ Laborers employed in erecting drilling rigs would also be covered.²⁸ Other preparatory work before drilling begins in an oil field, such as staking oil claims, surveying, clearing the land, assembling materials and equipment, erecting sheds, derricks or dikes would also be within the scope of the

²⁵ See §§776.19 (a) and (b) and 776.21(b)(3). See also cases cited in footnote 22 of this subpart.

²⁶ *Warren-Bradshaw Drilling Co. v. Hall*, 317 U.S. 8.

²⁷ *Culver v. Bell & Loffland*, 146 F. (2d) 20.

²⁸ *Devine v. Levy*, 39 F. Supp. 44.

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Act.²⁹ Preliminary work such as the foregoing has the requisite close and immediate tie with the production of goods for commerce to be within the coverage of the Act.

(2) Similarly, coverage extends to employees engaged in the installation of machinery to be used in covered production in a new factory building, even though the construction of the building itself may not have been subject to the Act. Such installation is considered to be a preliminary production activity rather than simply part of the construction of the building.

(3) If the construction project is subject to the Act, preliminary activities, such as surveying, clearing, draining and leveling the land, erecting necessary buildings to house materials and equipment, or the demolition of structures in order to begin building the covered facility, are subject to the Act.³⁰

(b) *Facilities used in aid of the covered construction.* The installation of facilities, and the repair and maintenance of trucks, tools, machinery and other equipment to be used by a contractor in the furtherance of his covered construction work, are activities subject to the Act.

§776.29 Instrumentalities and channels of interstate commerce.

(a) *Typical examples.* Instrumentalities and channels which serve as the media for the movement of goods and persons in interstate commerce or for interstate communications include railroads, highways, city streets; telephone, gas, electric and pipe line systems; radio and television broadcasting facilities; rivers, canals and other waterways; airports; railroad, bus, truck or steamship terminals; freight depots, bridges, ferries, bays, harbors, docks, wharves, piers; ships, vehicles and aircraft which are regularly used in interstate commerce.³¹

(b) *General character of an instrumentality of interstate commerce.* (1) An instrumentality of interstate commerce need not stretch across State lines but

²⁹ *Straughn v. Schlumberger Well Surveying Corp.*, 72 F. Supp. 511.

³⁰ Coverage of preparation of plans and designs is discussed in §776.19(b) (2).

³¹ General coverage bulletin, §776.11.