

## Wage and Hour Division, Labor

## § 779.10

of overtime compensation; part 785 of this chapter, discussing the calculation of hours worked; and part 800 of this chapter, discussing equal pay for equal work.

### INTERPRETATIONS OF THE LAW

#### § 779.7 Significance of official interpretations.

The regulations in this part contain the official interpretations of the Department of Labor with respect to the application under described circumstances of the provisions of law which they discuss. These interpretations indicate the construction of the law which the Secretary of Labor and the Administrator believe to be correct and which will guide them in the performance of their duties under the Act unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon reexamination of an interpretation, that it is incorrect.

#### § 779.8 Basic support for interpretations.

The ultimate decisions on interpretations of the Act are made by the courts (*Mitchell v. Zachry*, 362 U.S. 310; *Kirschbaum v. Walling*, 316 U.S. 517). Court decisions supporting interpretations contained in this bulletin are cited where it is believed they may be helpful. On matters which have not been determined by the courts, it is necessary for the Secretary of Labor and the Administrator to reach conclusions as to the meaning and the application of provisions of the law in order to carry out their responsibilities of administration and enforcement (*Skidmore v. Swift*, 323 U.S. 134). In order that these positions may be made known to persons who may be affected by them, official interpretations are issued by the Administrator on the advice of the Solicitor of Labor, as authorized by the Secretary (Reorg. Pl. 6 of 1950, 64 Stat. 1263; Gen. Ord. 45A, May 24, 1950; 15 FR 3290). As included in the regulations in this part, these interpretations are believed to express the intent of the law as reflected in its provisions as constructed by the courts and evidenced by its legislative history. References to pertinent legisla-

tive history are made in this part where it appears that they will contribute to a better understanding of the interpretations.

#### § 779.9 Reliance on interpretations.

The interpretations of the law contained in this part are official interpretations which may be relied upon as provided in section 10 of the Portal-to-Portal Act of 1947. In addition, the Supreme Court has recognized that such interpretations of the Act "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" and "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." Further, as stated by the Court: "Good administration of the Act and good judicial administration alike require that the standards of public enforcement and those for determining private rights shall be at variance only where justified by very good reasons." (*Skidmore v. Swift*, 323 U.S. 134.) Some of the interpretations in subpart D of this part relating to the scope of the exemption provided for retail or service establishments are interpretations of this exemption as it appeared in the original Act before amendment in 1949 and 1961, which have remained unchanged because they were consistent with the amendments. These interpretations may be said to have Congressional sanction because "When Congress amended the Act in 1949 it provided that pre-1949 rulings and interpretations by the Administrator should remain in effect unless inconsistent with the statute as amended. 63 Stat. 920." (*Mitchell v. Kentucky Finance Co.*, 359 U.S. 290.)

#### § 779.10 Interpretations made, continued, and superseded by this part.

On and after publication of this part in the FEDERAL REGISTER, the interpretations contained therein shall be in effect and shall remain in effect until they are modified, rescinded, or withdrawn. This part supersedes and replaces the interpretations previously published in the FEDERAL REGISTER and Code of Federal Regulations as part 779 of this chapter. Prior opinions,

rulings and interpretations and prior enforcement policies which are not inconsistent with the interpretations in this part or with the Fair Labor Standards Act as amended by the Fair Labor Standards Amendments of 1961 are continued in effect; all other opinions, rulings, interpretations, and enforcement policies on the subjects discussed in the interpretations in this part are rescinded and withdrawn. The interpretations in this part provide statements of general principles applicable to the subjects discussed and illustrations of the application of these principles to situations that frequently arise. They do not and cannot refer specifically to every problem which may be met by retailers in the application of the Act. 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 Secretary of Labor or the Administrator with respect to such problem or to constitute an administrative interpretation or practice or enforcement policy. Questions on matters not fully covered by this part may be addressed to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210, or to any Regional or District Office of the Division.

#### SOME BASIC DEFINITIONS

##### § 779.11 General statement.

The meaning and application of the provisions of law discussed in this part depend in large degree on the definitions of terms used in these provisions. The Act itself defines some of these terms. Others have been defined and construed in decisions of the courts. In the following sections some of these basic definitions are set forth for ready reference in connection with the part's discussion of the various provisions in which they appear. Some of these definitions and their application are considered in detail in other interpretative bulletins. The application of the others is considered in the sections of this part where the particular provisions containing the defined terms are discussed.

##### § 779.12 Commerce.

*Commerce* as used in the Act includes interstate and foreign commerce. It is defined in section 3(b) of the Act to mean "trade, commerce, transportation, transmission or communication among the several States or between any State and any place outside thereof." (For the definition of "State" see § 779.16.) The application of this definition and the kinds of activities which it includes are discussed at length in the interpretative bulletin on general coverage of the Act, part 776 of this chapter.

##### § 779.13 Production.

To understand the meaning of "production" of goods for commerce as used in the Act it is necessary to refer to the definition in section 3(j) of the term "produced." A detailed discussion of the application of the term as defined is contained in the interpretative bulletin on general coverage of the Act, part 776 of this chapter. Section 3(j) provides that "produced" as used in the Act "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." (For the definition of "State," see § 779.16.)

##### § 779.14 Goods.

The definition in section 3(i) of the Act states that *goods*, as used in the Act, means "goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof." The interpretative bulletin on general coverage of the Act, part 776 of this chapter, contains a detailed discussion of