

§ 779.101

prior or amended enterprise definition of the Act, except those who may be denied one or both of these benefits by virtue of some specific exemption provision of the Act. Of special interest to the retailer in a covered enterprise is the exemption from the minimum wage and overtime provisions for certain small retail or service establishments of such enterprise. This exemption is applicable under the conditions and subject to exceptions stated in section 13(a) (2) of the Act to any retail or service establishment which has an annual dollar volume of sales of less than \$250,000 (exclusive of certain excise taxes) even if the establishment is a part of an enterprise that is covered by the Act. This exemption and other exemptions of particular interest to retailers and their employees are discussed in subparts D and E of this part. The child labor provisions as they apply to retail or service businesses are discussed in subpart F of this part.

§ 779.101 Guiding principles for applying coverage and exemption provisions.

It is clear that Congress intended the Fair Labor Standards Act to be broad in its scope. "Breadth of coverage is vital to its mission." (*Powell v. U.S. Cartridge Co.*, 339 U.S. 497.) An employer who claims an exemption under the Act has the burden of showing that it applies. (*Walling v. General Industries Co.*, 330 U.S. 545; *Mitchell v. Kentucky Finance Co.*, 359 U.S. 290; *Fleming v. Hawkeye Pearl Button Co.*, 113 F. 2d 52.) Conditions specified in the language of the Act are "explicit prerequisites to exemption." (*Arnold v. Kanowsky*, 361 U.S. 388.) "The details with which the exemptions in this Act have been made preclude their enlargement by implication." (*Addison v. Holly Hill*, 322 U.S. 60; *Maneja v. Waiialua*, 349 U.S. 254.) Exemptions provided in the Act "are to be narrowly construed against the employer seeking to assert them" and their application limited to those who come plainly and unmistakably within their terms and spirit; this restricted or narrow construction of the exemptions is necessary to carry out the broad objectives for which the Act was passed. (*Phillips v. Walling*, 324 U.S. 490; *Mitchell v. Kentucky Finance Co.*, supra;

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

Arnold v. Kanowsky, supra; *Calaf v. Gonzalez*, 127 F. 2d 934; *Bowie v. Gonzalez*, 117 F. 2d 11; *Mitchell v. Stinson*, 217 F. 2d 210; *Fleming v. Hawkeye Pearl Button Co.*, 113 F. 2d 52.)

§ 779.102 Scope of this subpart.

The Act has applied since 1938 and continues to apply to all employees, not specifically exempted, who are engaged: (a) In interstate or foreign commerce or (b) in the production of goods for such commerce, which is defined to include any closely related process or occupation directly essential to such production. (See §§ 779.12-779.16 for definitions governing the scope of this coverage.) Prior to the 1961 amendments a retailer was not generally concerned with the coverage provisions as they applied to his individual employees because retail or service establishments ordinarily were exempt. However, in some cases such coverage was applicable as where employees were employed in central offices of warehouses of retail chain store systems and, therefore, were not exempt. (See § 779.118.) Some exemptions for retail or service establishments were narrowed as a result of the 1961 amendments and further revised or eliminated by the 1966 amendments effective February 1, 1967. Therefore, discussion of the individual coverage provisions of the Act is pertinent and this subpart will discuss briefly the principles of such coverage with particular reference to employment in the retail or service trades. A more comprehensive discussion with respect to employees engaged in commerce or in the production of goods for commerce may be found in part 776 of this chapter, the general coverage bulletin.

EMPLOYEES ENGAGED IN COMMERCE OR IN THE PRODUCTION OF GOODS FOR COMMERCE

§ 779.103 Employees "engaged in commerce."

Employees are "engaged in commerce" within the meaning of the Act when they are performing work involving or related to the movement of persons or things (whether tangibles or intangibles, and including information and intelligence) among the several States or between any State and any