

§ 784.7

U.S. Department of Labor, Washington, DC 20210, or to any Regional Office of the Division.

SOME BASIC DEFINITIONS

§ 784.7 **Definition of terms used in the Act.**

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. These definitions and their application are further considered in other interpretative bulletins to which reference is made, and in the sections of this part where the particular provisions containing the defined terms are discussed.

§ 784.8 **“Employer,” “employee,” and “employ.”**

The Act's major provisions impose certain requirements and prohibitions on every “employer” subject to their terms. The employment by an “employer” of an “employee” is, to the extent specified in the Act, made subject to minimum wage and overtime pay requirements and to prohibitions against the employment of oppressive child labor. The Act provides its own definitions of “employer,” “employee” and “employ,” under which “economic reality” rather than “technical concepts” determines whether there is employment subject to its terms (*Goldberg v. Whitaker House Cooperative*, 366 U.S. 28; *United States v. Silk*, 331 U.S. 704; *Rutherford Food Corp. v. McComb*, 331 U.S. 722). An “employer,” as defined in section 3(d) of the Act, “includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.” An “employee,” as defined in section 3(e) of the Act, “in-

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cludes any individual employed by an employer,” and “employ,” as used in the Act, is defined in section 3(g) to include “to suffer or permit to work.” It should be noted, as explained in part 791 of this chapter, dealing with joint employment that in appropriate circumstances two or more employers may be jointly responsible for compliance with the statutory requirements applicable to employment of a particular employee. It should also be noted that “employer,” “enterprise,” and “establishment” are not synonymous terms, as used in the Act. An employer may have an enterprise with more than one establishment, or he may have more than one enterprise in which he employs employees within the meaning of the Act. Also, there may be different employers who employ employees in a particular establishment or enterprise.

§ 784.9 **“Person.”**

As used in the Act (including the definition of “enterprise” set forth below in § 784.10), “person” is defined as meaning “an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons” (Act, section 3(a)).

§ 784.10 **“Enterprise.”**

The term “enterprise” which may, in some situations, be pertinent in determining coverage of this Act to employees employed by employers engaged in the procurement, processing, or distribution of aquatic products, is defined in section 3(r) of the Act, section 3(r) states:

Enterprise means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor * * *.

The scope and application of this definition is discussed in part 776 of this chapter.