

Occupational Safety and Health Admin., Labor

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AUTHORITY: Secs. 2, 3, 4, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 651, 652, 653, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754).

SOURCE: 37 FR 929, Jan. 21, 1972, unless otherwise noted.

§ 1975.1 Purpose and scope.

(a) Among other things, the Williams-Steiger Act poses certain duties on employers. This part has the limited purpose and scope of clarifying which persons are considered to be employers either as a matter of interpretation of the intent and terms of the Act or as a matter of policy appropriate to administering and enforcing the Act. In short, the purpose and scope of this part is to indicate which persons are covered by the Act as employers and, as such, subject to the requirements of the Act.

(b) It is not the purpose of this part to indicate the legal effect of the Act, once coverage is determined. Section 4(b)(1) of the Act provides that the statute shall be inapplicable to working conditions to the extent they are subject to another Federal agency's exercise of different statutory authority affecting the occupational safety and health aspects of those conditions. Therefore, a person may be considered an employer covered by the Act, and yet standards issued under the Act respecting certain working conditions would not be applicable to the extent those conditions were subject to another agency's authority.

§ 1975.2 Basis of authority.

The power of Congress to regulate employment conditions under the Williams-Steiger Occupational Safety and Health Act of 1970, is derived mainly from the Commerce Clause of the Constitution. (section 2(b), Pub. L. 91-596; U.S. Constitution, Art. I, Sec. 8, Cl. 3; "United States v. Darby," 312 U.S. 100.) The reach of the Commerce Clause extends beyond Federal regulation of the channels and instrumentalities of

interstate commerce so as to empower Congress to regulate conditions or activities which affect commerce even though the activity or condition may itself not be commerce and may be purely intrastate in character. ("Gibbons v. Ogden," 9 Wheat. 1, 195; "United States v. Darby," supra; "Wickard v. Filburn," 317 U.S. 111, 117; and "Perez v. United States," 91 S. Ct. 1357 (1971).) And it is not necessary to prove that any particular intrastate activity affects commerce, if the activity is included in a class of activities which Congress intended to regulate because the class affects commerce. ("Heart of Atlanta Motel, Inc. v. United States," 379 U.S. 241; "Katzenbach v. McClung," 379 U.S. 294; and "Perez v. United States," supra.) Generally speaking, the class of activities which Congress may regulate under the commerce power may be as broad and as inclusive as Congress intends, since the commerce power is plenary and has no restrictions placed on it except specific constitutional prohibitions and those restrictions Congress, itself, places on it. ("United States v. Wrightwood Dairy Co.," 315 U.S. 110; and "United States v. Darby," supra.) Since there are no specific constitutional prohibitions involved, the issue is reduced to the question: How inclusive did Congress intend the class of activities to be under the Williams-Steiger Act?

§ 1975.3 Extent of coverage.

(a) Section 2(b) of the Williams-Steiger Occupational Safety and Health Act (Public Law 91-596) sets forth the purpose and policy of Congress in enacting this legislation. In pertinent part, that section reads as follows:

(b) Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources * * *

Congressman William Steiger described the scope of the Act's coverage in the following words during a discussion of the legislation on the floor of the House of Representatives:

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The coverage of this bill is as broad, generally speaking, as the authority vested in the Federal Government by the commerce clause of the Constitution (Cong. Rec., vol. 116, p. H-11899, Dec. 17, 1970)

The legislative history, as a whole, clearly shows that every amendment or other proposal which would have resulted in any employee's being left outside the protections afforded by the Act was rejected. The reason for excluding no employee, either by exemption or limitation on coverage, lies in the most fundamental of social purposes of this legislation which is to protect the lives and health of human beings in the context of their employment.

(b) The Williams-Steiger Act includes special provisions (sections 19 and 18(c)(6)) for the protection of Federal and State employees to whom the Act's other provisions are made inapplicable under section 3(5), which excludes from the definition of the term "employer" both the United States and any State or political subdivision of a State.

(c) In the case of section 4(b)(1) of the Act, which makes the Act inapplicable to working conditions to the extent they are protected under laws administered by other Federal agencies, Congress did not intend to grant any general exemptions under the Act; its sole purpose was to avoid duplication of effort by Federal agencies in establishing a national policy of occupational safety and health protection.

(d) Interpretation of the provisions and terms of the Williams-Steiger Act must of necessity be consistent with the express intent of Congress to exercise its commerce power to the extent that, "so far as possible, every working man and woman in the Nation" would be protected as provided for in the Act. The words "so far as possible" refer to the practical extent to which governmental regulation and expended resources are capable of achieving safe and healthful working conditions; the words are not ones of limitation on coverage. The controlling definition for the purpose of coverage under the Act is that of "employer" contained in section 3(5). This term is defined as follows:

(5) The term "employer" means any person engaged in a business affecting commerce

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who has employees, but does not include the United States or any State or political subdivision of a State.

In carrying out the broad coverage mandate of Congress, we interpret the term "business" in the above definition as including any commercial or non-commercial activity affecting commerce and involving the employment of one or more employees; the term "commerce" is defined in the Act itself, in section 3(3). Since the legislative history and the words of the statute, itself, indicate that Congress intended the full exercise of its commerce power in order to reduce employment-related hazards which, as a whole impose a substantial burden on commerce, it follows that all employments where such hazards exist or could exist (that is, those involving the employment of one or more employees) were intended to be regulated as a class of activities which affects commerce.

§ 1975.4 Coverage.

(a) *General.* Any employer employing one or more employees would be an "employer engaged in a business affecting commerce who has employees" and, therefore, he is covered by the Act as such.

(b) *Clarification as to certain employers*—(1) *The professions, such as physicians, attorneys, etc.* Where a member of a profession, such as an attorney or physician, employs one or more employees such member comes within the definition of an employer as defined in the Act and interpreted thereunder and, therefore, such member is covered as an employer under the Act and required to comply with its provisions and with the regulations issued thereunder to the extent applicable.

(2) *Agricultural employers.* Any person engaged in an agricultural activity employing one or more employees comes within the definition of an employer under the Act, and therefore, is covered by its provisions. However, members of the immediate family of the farm employer are not regarded as employees for the purposes of this definition.

(3) *Indians.* The Williams-Steiger Act contains no special provisions with respect to different treatment in the case of Indians. It is well settled that under statutes of general application, such as