

§ 776.12

by such instrumentalities.⁴⁵ Such work is "so related to the actual movement of commerce as to be considered an essential and indispensable part thereof, and without which it would be impeded or impaired."⁴⁶

§ 776.12 Employees traveling across State lines.

Questions are frequently asked as to whether the fact that an employee crosses State lines in connection with his employment brings him within the Act's coverage as an employee "engaged in commerce." Typical of the employments in which such questions arise are those of traveling service men, traveling buyers, traveling construction crews, collectors, and employees of such organizations as circuses, carnivals, road shows, and orchestras. The area of coverage in such situations cannot be delimited by any exact formula, since questions of degree are necessarily involved. If the employee transports material or equipment or other persons across State lines or within a particular State as a part of an interstate movement, it is clear of course, that he is engaging in commerce.⁴⁷ And as a general rule, employees who are regularly engaged in traveling across State lines in the performance of their duties (as distinguished from merely going to and from their homes or lodgings in commuting to a work place) are engaged in commerce and covered by the Act.⁴⁸ On the other hand, it is equally plain that an employee who, in isolated or sporadic instances, happens to cross a State line in the course of his employment, which is otherwise intrastate in character, is not, for that sole reason, covered by the Act. Nor would a man who occasionally moves to another State in

⁴⁵Such employees would also be covered as engaged in the production of goods for commerce. See *Lewis v. Florida Power & Light Co.*, 154 F. 2d 751 (C.A. 5); *Walling v. Connecticut Co.*, 154 F. 2d 552 (C.A. 2); also § 776.21(b).

⁴⁶*New Mexico Public Service Co. v. Engel*, 145 F. 2d 636, 640 (C.A. 10).

⁴⁷The employee may, however, be exempt from the overtime provisions of the Act under section 13(b)(1). See part 792 of this chapter.

⁴⁸*Reck v. Zarmocay*, 264 App. Div. 520, 36 N.Y.S. 2d 394; *Colbeck v. Dairyland Creamery Co.*, 17 N.W. 2d 262 (S. Ct. S.D.).

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order to pursue an essentially local trade or occupation there become an employee "engaged in commerce" by virtue of that fact alone. Doubtful questions arising in the area between the two extremes must be resolved on the basis of the facts in each individual case.

§ 776.13 Commerce crossing international boundaries.

Under the Act, as amended, an employee engaged in "trade commerce, transportation, transmission, or communication" between any State and any place outside thereof is covered by the Act regardless of whether the "place outside" is another State or is a foreign country or is some other place. Before the amendment to section 3(b) which became effective January 25, 1950, employees whose work related solely to the flow of commerce into a State from places outside it which were not "States" as defined in the Act were not employees engaged in "commerce" for purposes of the Act, although employees whose work was concerned with the flow of commerce out of the State to such places were so engaged.⁴⁹ This placed employees of importers in a less favorable position under the Act than the employees of exporters. This inequality was removed by the amendment to section 3(b).⁵⁰ Accordingly, employees performing work in connection with the importation of goods from foreign countries are engaged "in commerce" and covered by the Act, as amended. The coverage of such employees, as of those performing work in connection with the exportation of goods to foreign countries, is determined by the same principles as in the case of employees whose work is connected with goods procured from or sent to other States.

⁴⁹The definition of "commerce" previously referred to commerce "from any State to any place outside thereof." The amendment substituted "between" for "from" and "and" for "to" in this clause.

⁵⁰H. Mgrs. St., 1949, pp. 13, 14.