

Wage and Hour Division, Labor

§ 776.2

REGISTER, subpart A of this interpretative bulletin replaces and supersedes the general statement previously published as part 776 of this chapter, which statement is withdrawn. All other administrative rulings, interpretations, practices and enforcement policies relating to the general coverage of the wages and hours provisions of the Act and not withdrawn prior to such date are, to the extent that they are inconsistent with or in conflict with the principles stated in this interpretative bulletin, hereby rescinded and withdrawn.

[15 FR 2925, May 17, 1950, as amended at 21 FR 1448, Mar. 6, 1956. Redesignated at 35 FR 5543, Apr. 3, 1970]

HOW COVERAGE IS DETERMINED

§ 776.1 General interpretative guides.

The congressional policy under which employees "engaged in commerce or in the production of goods for commerce" are brought within the general coverage of the Act's wage and hours provisions is stated in section 2 of the Act. This section makes it clear that the congressional power to regulate interstate and foreign commerce is exercised in this Act in order to remedy certain evils, namely, "labor conditions detrimental to the maintenance of the minimum standards of living necessary for health, efficiency, and the general well being of workers" which Congress found "(a) causes commerce and the channels and instrumentalities of commerce to be used to perpetuate such labor conditions among the workers of the several States; (b) burdens commerce and the free flow of goods in commerce; (c) constitutes an unfair method of competition in commerce; (d) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce and (e) interferes with the orderly and fair marketing of goods in commerce." In carrying out these broad remedial purposes, however, the Congress did not choose to make the scope of the Act co-extensive in all respects with the limits of its power over commerce or to apply it to all activities affecting com-

merce.⁷ Congress delimited the area in which the Act operates by providing for certain exceptions and exemptions, and by making wage-hour coverage applicable only to employees who are "engaged in" either "commerce", as defined in the Act, or "production" of "goods" for such commerce, within the meaning of the Act's definitions of these terms. The Fair Labor Standards Amendments of 1949 indicate an intention to restrict somewhat the category of employees within the reach of the Act under the former definition of "produced" and to expand to some extent the group covered under the former definition of "commerce." In his interpretations, the Administrator will endeavor to give effect to both the broad remedial purposes of the Act and the limitations on its application, seeking guidance in his task from the terms of the statute, from authoritative court decisions, and from the legislative history of the Act, as amended.⁸

§ 776.2 Employee basis of coverage.

(a) The coverage of the Act's wage and hours provisions as described in sections 6 and 7 does not deal in a blanket way with industries as a whole. Thus, in section 6, it is provided that every employer shall pay the statutory

⁷ *Kirschbaum v. Walling*, 316 U.S. 517; *Walling v. Jacksonville Paper Co.*, 317 U.S. 564; *10 East 40th St. Bldg. Co. v. Callus*, 325 U.S. 578; *A. H. Phillips, Inc. v. Walling*, 324 U.S. 490; *Fleming v. Hawkeye Pearl Button Co.*, 113 F. 2d 52 (C.A. 8); *Armstrong v. Walling*, 161 F. 2d 515 (C.A. 1); *Bowie v. Gonzalez*, 117 F. 2d 11 (C.A. 1).

⁸ Footnote references to some of the relevant court decisions are made for the assistance of readers who may be interested in such decisions.

Footnote reference to the legislative history of the 1949 amendments are made at points in this part where it is believed they may be helpful. References to the *Statement of the Managers on the part of the House*, appended to the Conference Report on the amendments (H. Rept. No. 1453, 81st Cong., 1st sess.) are abbreviated: H. Mgrs. St. 1949, p. _____. References to the *Statement of a majority of the Senate Conferees*, 95 Cong. Rec., October 19, 1949 at 15372-15377 are abbreviated: Sen. St., 1949 Cong. Rec. References to the Congressional Record are to the 1949 daily issues, the permanent volumes being unavailable at the time this part was prepared.

minimum wage to “each of his employees who is engaged in commerce or in the production of goods for commerce.” It thus becomes primarily an individual matter as to the nature of the employment of the particular employee. Some employers in a given industry may have no employees covered by the Act; other employers in the industry may have some employees covered by the Act, and not others; still other employers in the industry may have all their employees within the Act’s coverage. If, after considering all relevant factors, employees are found to be engaged in covered work, their employer cannot avoid his obligations to them under the Act on the ground that he is not “engaged in commerce or in the production of goods for commerce.” To the extent that his employees are so engaged, he is himself so engaged.⁹

(b) In determining whether an individual employee is within the coverage of the wage and hours provisions, however, the relationship of an employer’s business to commerce or to the production of goods for commerce may sometimes be an important indication of the character of the employee’s work.¹⁰ It is apparent, too, from the 1949 amendment to the definition of “produced” and its legislative history that an examination of the character of the employer’s business will in some borderline situations be necessary in determining whether the employees’ occupation bears the requisite close relationship to production for commerce.¹¹

§776.3 Persons engaging in both covered and noncovered activities.

The Act applies to employees “engaged in commerce or in the production of goods for commerce” without

⁹ *Kirschbaum v. Walling*, 316 U.S. 517. See also *Walling v. Jacksonville Paper Co.*, 317 U.S. 564; *McLeod v. Threlkeld*, 319 U.S. 491; *Mabee v. White Plains Pub. Co.*, 327 U.S. 178.

¹⁰ *Borden Co. v. Borella*, 325 U.S. 679; *10 E. 40th St. Bldg. Co. v. Callus*, 325 U.S. 578; *Armour & Co. v. Wantock*, 323 U.S. 126; *Donovan v. Shell Oil Co.*, 168 F. 2d 229 (C.A. 4); *Hertz Driveurself Stations v. United States*, 150 F. 2d 923 (C.A. 8); *Horton v. Wilson & Co.*, 223 N.C. 71, 25 S.E. 2d 437.

¹¹ H. Mgrs. St., 1949, pp. 14, 15; Sen. St. 1949 Cong. Rec. 15372.

regard to whether such employees, or their employer, are also engaged in other activities which would not bring them within the coverage of the Act. The Act makes no distinction as to the percentage, volume, or amount of activities of either employee or employer which constitute engaging in commerce or in the production of goods for commerce. Sections 6 and 7 refer to “each” and “any” employee so engaged, and section 15(a)(1) prohibits the introduction into the channels of interstate or foreign commerce of “any” goods in the production of which “any” employee was employed in violation of section 6 or section 7. Although employees doing work in connection with mere isolated, sporadic, or occasional shipments in commerce of insubstantial amounts of goods will not be considered covered by virtue of that fact alone, the law is settled that every employee whose engagement in activities in commerce or in the production of goods for commerce, even though small in amount, is regular and recurring, is covered by the Act.¹² This does not, however, necessarily mean that an employee who at some particular time may engage in work which brings him within the coverage of the Act is, by reason of that fact, thereafter indefinitely entitled to its benefits.

§776.4 Workweek standard.

(a) The workweek is to be taken as the standard in determining the applicability of the Act.¹³ Thus, if in any workweek an employee is engaged in both covered and noncovered work he is entitled to both the wage and hours

¹² *United States v. Darby*, 312 U.S. 100; *Mabee v. White Plains Pub. Co.*, 327 U.S. 178; *Schmidt v. Peoples Telephone Union of Maryville, Missouri*, 138 F. 2d 13 (C.A. 8); *New Mexico Public Service Co. v. Engel*, 145 F. 2d 636 (C.A. 10); *Sun Pub. Co. v. Walling*, 140 F. 2d 445 (C.A. 6), certiorari denied 322 U.S. 728; *Davis v. Goodman Lumber Co.*, 133 F. 2d 52 (C.A. 4).

¹³ See *Gordon’s Transports v. Walling*, 162 F. 2d 203 (C.A. 6), certiorari denied 332 U.S. 774; *Walling v. Fox-Pelletier Detective Agency*, 4 W.H. Cases 452 (W.D. Tenn.), 8 Labor Cases 62,219; *Walling v. Black Diamond Coal Mining Co.*, 59 F. Supp. 348 (W.D. Ky.); *Fleming v. Knox*, 42 F. Supp. 948 (S.D. Ga.); *Roberg v. Henry Phipps Estate*, 156 F. 2d 958 (C.A. 2). For a definition of the workweek, see §778.2(c) of this chapter.