

Wage and Hour Division, Labor

§ 779.228

located in an establishment which is not itself a covered enterprise or part of a covered enterprise. Likewise, the applicability of exemptions for certain retail or service establishments from the Act's minimum wage or overtime pay provisions, or both, to employees of a leased department would depend upon the character of the establishment in which the leased department is located. Other sections of this subpart discuss the coverage of leased retail and service departments in more detail while subpart D of this part explains how exemptions for certain retail and service establishments apply to leased department employees.

§ 779.226 Exception for an independently owned retail or service establishment under certain franchise and other arrangements.

While certain franchise and other arrangements may operate to bring the one to whom the franchise is granted into another enterprise (see § 779.232), section 3(r) contains a specific exception for certain arrangements entered into by a retail or service establishment which is under independent ownership. The specific exception in section 3(r) reads as follows:

Provided. That, within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement, (1) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, (2) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or (3) that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments.

§ 779.227 Conditions which must be met for exception.

This exception, in accordance with its specific terms, will apply to exclude an establishment from enterprise coverage only if the following conditions are met:

(a) The establishment must be a "retail or service establishment" as this term is defined in section 13(a)(2) of the Act (see discussion of this term in §§ 779.312 and 779.313); and

(b) The retail or service establishment must not be an "enterprise" which is large enough to come within the scope of section 3(s) of the Act; and

(c) The retail or service establishment must be under independent ownership.

§ 779.228 Types of arrangements contemplated by exception.

If the retail or service establishment meets the requirements in paragraphs (a) through (c) of § 779.227, it may enter into the following arrangements without becoming a part of the larger enterprise, that is, without losing its status as a "separate and distinct enterprise" to which section 3(s) would not otherwise apply:

(a) Any arrangement, whether by agreement, franchise or otherwise, that it will sell, or sell only certain goods specified by a particular manufacturer, distributor, or advertiser.

(b) Any such arrangement that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area.

(c) Any such arrangement by which it will join with other similar retail or service establishments in the same industry for the purpose of collective purchasing. Where an agreement for "collective purchasing" is involved, further requirements are imposed, namely, that all of the other establishments joining in the agreement must be retail or service establishments under independent ownership, and that all of the establishments joining in the collective purchasing arrangement must be "in the same industry." This has reference to such arrangements by a group of grocery stores, or by some other trade group in the retail industry.

(d) Any arrangement whereby the establishment's premises are leased from a person who also leases premises to other retail or service establishments. In connection with this rental arrangement, the Senate Report cites as an example the retail establishment which