

Wage and Hour Division, Labor

§ 779.304

Any employee of a retail or service establishment which is primarily engaged in the business of selling automobiles, trucks, or farm implements.

(5) Section 13(a)(20) exempted those employees who are now exempt from the overtime provisions only under section 13(b)(18) of the present Act.

(c) Employees who were exempt from the minimum wage and overtime pay requirements under a provision of the prior Act set forth in paragraph (b) of this section, but are no longer exempt from one or both of such requirements under the present Act must be paid minimum wages or overtime pay, as the case may be, in accordance with the pay standards provided for newly covered employment, in any workweek when they perform work within the individual or enterprise coverage of the Act.

“ESTABLISHMENT” BASIS OF EXEMPTIONS

§ 779.302 Exemptions depend on character of establishment.

Some exemptions depend on the character of the establishment by which an employee is employed. These include the “retail or service establishment” exemptions in sections 13(a) (2), (4), and (11) and the exemptions available to the establishments of the character specified in sections 13(a) (3), (9), and 13(b)(8) (first part). Therefore, if the establishment meets the tests enumerated in these sections, employees “employed by” that establishment are generally exempt from sections 6 and 7. (See §§779.307 to 779.309 discussing “employed by.”) Other exemptions establish two criteria, the character of the establishment and the nature of the conditions of the employment of the particular employee. Such exemptions are set forth in section 13(b)(8) (second part), and section 13(b)(18) and (19). To determine whether the exemptions of these sections apply it is necessary to determine both that the establishment meets the enumerated tests and that the employee is engaged in the enumerated activities or employed under the conditions specified. Thus, under section 13(b)(18) some of the employees of a given employer may be exempt from the overtime pay re-

quirements (but not the minimum wage) of the Act, while others may not.

§ 779.303 “Establishment” defined; distinguished from “enterprise” and “business.”

As previously stated in §779.23, the term *establishment* as used in the Act means a distinct physical place of business. The “enterprise,” by reason of the definition contained in section 3(r) of the Act and the tests enumerated in section 3(s) of the Act, may be composed of a single establishment. The term “establishment,” however, is not synonymous with the words “business” or “enterprise” when those terms are used to describe multiunit operations. In such a multiunit operation some of the establishments may qualify for exemption, others may not. For example, a manufacturer may operate a plant for production of its goods, a separate warehouse for storage and distribution, and several stores from which its products are sold. Each such physically separate place of business is a separate establishment. In the case of chain store systems, branch stores, groups of independent stores organized to carry on business in a manner similar to chain store systems, and retail outlets operated by manufacturing or distributing concerns, each separate place of business ordinarily is a separate establishment.

§ 779.304 Illustrations of a single establishment.

(a) The unit store ordinarily will constitute the establishment contemplated by the exemptions. The mere fact that a store is departmentalized will not alter the rule. For example, the typical large department store carries a wide variety of lines which ordinarily are segregated or departmentalized not only as to location within the store, but also as to operation and records. Where such departments are operated as integral parts of a unit, the departmentalized unit taken as a whole ordinarily will be considered to be the establishment contemplated by the exemptions, even if there is diversity of ownership of some of the departments, such as leased departments.

(b) Some stores, such as bakery or tailor shops, may produce goods in a