

§ 779.310

§ 779.310 Employees of employers operating multi-unit businesses.

(a) Where the employer's business operations are conducted in more than one establishment, as in the various units of a chain-store system or where branch establishments are operated in conjunction with a main store, the employer is entitled to exemption under section 13(a)(2) or (4) for those of his employees in such business operations, and those only, who are "employed by" an establishment which qualifies for exemption under the statutory tests. For example, the central office or central warehouse of a chain-store operation even though located on the same premises as one of the chain's retail stores would be considered a separate establishment for purposes of the exemption, if it is physically separated from the area in which the retail operations are carried on and has separate employees and records. (*Goldberg v. Sunshine Department Stores*, 15 W.H. Cases 169 (CA-5) *Mitchell v. Miller Drugs, Inc.*, 255 F. 2d 574 (CA-1); *Walling v. Goldblatt Bros.*, 152 F. 2d 475 (CA-7).)

(b) Under this test, employees in the warehouse and central offices of chainstore systems have not been exempt prior to, and their nonexempt status is not changed by, the 1961 amendments. Typically, chain-store organizations are merchandising institutions of a hybrid retail-wholesale nature, whose wholesale functions are performed through their warehouses and central offices and similar establishments which distribute to or serve the various retail outlets. Such central establishments clearly cannot qualify as exempt establishments. (*A. H. Phillips, Inc. v. Walling*, 324 U.S. 490; *Mitchell v. C & P Stores*, 286 F. 2d 109 (CA-5).) The employees working there are not "employed by" any single exempt establishment of the business; they are, rather, "employed by" an organization of a number of such establishments. Their status obviously differs from that of employees of an exempt retail or service establishment, working in a warehouse operated by and servicing such establishment exclusively, who are exempt as employees "employed by" the exempt establishment regardless of whether or not the warehouse operation is conducted in the same

29 CFR Ch. V (7-1-06 Edition)

building as the selling or servicing activities.

§ 779.311 Employees working in more than one establishment of same employer.

(a) An employee who is employed by an establishment which qualifies as an exempt establishment under section 13(a)(2) or (4) is exempt from the minimum wage and overtime requirements of the Act even though his employer also operates one or more establishments which are not exempt. On the other hand, it may be stated as a general rule that if such an employer employs an employee in the work of both exempt and nonexempt establishments during the same workweek, the employee is not "employed by" an exempt establishment during such workweek. It is recognized, however, that employees performing an insignificant amount of such incidental work or performing work sporadically for the benefit of another establishment of their employer nevertheless, are "employed by" their employer's retail establishment. For example, there are situations where an employee of an employer in order to discharge adequately the requirements of his job for the exempt establishment by which he is employed incidentally or sporadically may be called upon to perform some work for the benefit of another establishment. For example, an elevator operator employed by a retail store, in performance of his regular duties for the store incidentally may carry personnel who have a central office or warehouse function. Similarly, a maintenance man employed by such store incidentally may perform work which is for the benefit of the central office or warehouse activities. Also, a sales clerk employed in a retail store in one of its sales departments sporadically may be called upon to release some of the stock on hand in the department for the use of another store.

(b) The application of the principles discussed in § 779.310 and in paragraph (a) of this section would not preclude the applicability of the exemption to the employee whose duties require him to spend part of his week in one exempt retail establishment and the balance of the week in another of his employer's exempt retail establishments; provided