

understanding of the parties to the employment agreement under the provisions of section 7(g)(3) of the Act; that section, like section 7(i), merely provides an exemption from the general requirement of overtime compensation based on the regular rate contained in section 7(a), if certain prescribed conditions are met (in section 7(g)(3) these include payment of overtime compensation on a basic rate established and authorized in accordance with its terms). The requirement of section 7(i) with respect to the "regular rate" of pay of an employee who may come within the exemption which it provides is a simple one: "the regular rate of pay of such employee," when employed "for a workweek in excess of the applicable workweek specified" in section 7(a), must be "in excess of one and one-half times the minimum hourly rate applicable to him under section 6." The employee's "regular rate" of pay must be computed, in accordance with the principles discussed above, on the basis of his hours of work in that particular workweek and the employee's compensation attributable to such hours. The hourly rate thus obtained must be compared with the applicable minimum rate of pay of the particular employee under the provisions of section 6 of the Act. If the latter rate is \$1.60 an hour, for example, then the employee's regular rate must be *more* than \$2.40 an hour if the exemption is to apply.

§ 779.420 Recordkeeping requirements.

The records which must be kept with respect to employees for whom the overtime pay exemption under section 7(i) is taken are specified in § 516.16 of this chapter.

§ 779.421 Basic rate for computing overtime compensation of non-exempt employees receiving commissions.

The overtime compensation due employees of a retail or service establishment who do not meet the exemption requirements of section 7(i) may be computed under the provisions of section 7(g)(3) of the Act if the employer and employee agree to do so under the conditions there provided. Section 7(g)(3) permits the use of a basic rate established, pursuant to agreement or

understanding in advance of the work, in lieu of the regular rate for the purpose of computing overtime compensation. The use of such a basic rate for employees of a retail or service establishment compensated wholly or partly by commissions is authorized under the conditions set forth in part 548 of this chapter.

Subpart F—Other Provisions Which May Affect Retail Enterprises

GENERAL

§ 779.500 Purpose of subpart.

In Subpart A of this part, reference was made to a number of regulations which discuss provisions of the Act, such as general coverage, overtime compensation, joint employment, hours worked, and methods of payment of wages, which are applicable to others as well as to retailers and their employees. (See § 779.6.) In addition to those provisions, the act contains other provisions of interest to retailers and their employees. It is the purpose of this subpart to focus attention on several of the more significant provisions in these categories.

EQUAL PAY PROVISIONS

§ 779.501 Statutory provisions.

Section 6(d) of the Act provides:

(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided*, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

Wage and Hour Division, Labor

§ 779.503

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this Act.

(4) As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Official interpretations of the Department of Labor with respect to the provisions of section 6(d) are found in part 800 of this chapter.

CHILD LABOR PROVISIONS

§ 779.502 Statutory provisions; regulations in part 1500 of this title.

(a) The Act's prohibitions in relation to employment of child labor, which may have application to retailers, are found in section 12(a) and section 12(c). Section 12(a) reads as follows:

No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within 30 days prior to the removal of such goods therefrom any oppressive child labor has been employed: *Provided*, That any such shipment or delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of this section, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited by this subsection and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

Section 12(c) provides:

No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise

engaged in commerce or in the production of goods for commerce.

(b) "Oppressive child labor" is defined by the Act, for purposes of the foregoing provisions, in the language set forth in § 779.505.

(c) Sections 570.1 to 570.129 of this chapter contain applicable regulations and a detailed discussion of the child labor provisions of the Act. Although those sections offer guidance for all including retailers, there are set forth in §§ 779.503 through 779.508 pertinent provisions and a brief discussion of the standards which are of particular interest to those in the retail field.

§ 779.503 The retailer and section 12(a).

Section 12(a) prohibits certain shipments or deliveries for shipment by "producers," "manufacturers" "or dealers." These terms having appeared in this section prior to the 1961 amendments are defined and described in § 570.105 of this chapter, and said definitions remain unchanged. It should be noted that the term "manufacturer" as used in section 12(a) includes retailers who, in addition to retail selling, engage in such manufacturing activities as the making of slipcovers or curtains, the baking of bread, the making of candy, or the making of window frames. Further, the term "dealers" refers to anyone who deals in goods including persons engaged in buying, selling, trading, distributing, delivering, etc. "Dealers," therefore, as used in section 12(a) include retailers. Therefore, where a retailer's business unit is covered under the Act and he is a producer, manufacturer or dealer within the meaning of this section, the retailer must comply with the requirements of section 12(a). If a retailer's business unit which is covered under the Act is exempt as a retail or service establishment under section 13 of the Act from the monetary requirements of the Act, the requirements of the child labor provisions must still be met. Thus, retail or service establishments, in covered enterprises, doing less than \$250,000 annually, must comply with the child labor requirements even if they are exempt from minimum wage and overtime provisions under section 13(a)(2) of the Act.