

in section 12. Also, it is possible that a court might conclude that Congress intended, under section 15(a)(1), that the assurance should refer specifically to the particular sections of the Act mentioned therein, since unless there is some violation of one of those sections in the production of goods, a subsequent purchaser is not prohibited from putting them in commerce.

There is no prescribed form or language that must be followed in order for the written assurance of compliance to afford the desired protection. However, in view of the considerations mentioned above, the following is suggested as a guide for the type of language which would appear to provide the maximum degree of certainty that a purchaser who acquired the goods in good faith in reliance on the written assurance would receive the protection intended by the amendments:

We hereby certify that these goods were produced in compliance with all applicable requirements of sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under section 14 thereof:

The question has also arisen as to what method should be used to give a purchaser a proper written assurance which would adequately identify the particular goods to which such assurance relates. Although other means of giving proper written assurances may be found to be more practical and convenient, it appears that one simple and feasible method of giving such assurance is for the producer to stamp or print the assurance on the invoice which covers the particular goods and which is given to the purchaser as a part of the transaction whereby the goods are acquired.

§789.5 “* * * acquired * * * in good faith * * * for value without notice * * *.”

Section 12(a) and section 15(a)(1) of the Act provide that a purchaser must acquire the goods in good faith in reliance on the specified written assurance in order to be accorded the statutory protection.

The legislative history of the amendments indicates that a purchaser's good faith is not to be determined

merely from the actual state of his mind but that good faith also depends upon an objective test—that of what a “reasonable, prudent man, acting with due diligence, would have done in the circumstances.” This good faith requirement is, in the words of the House Managers, “comparable to similar requirements imposed on purchasers in other fields of law.” The final determination of what will amount to good faith can be made only upon the basis of the pertinent facts in each situation.

It is clear, however, that good faith as used in the Act, not only requires honesty of intention but also that a purchaser must not know, have reason to know, or have knowledge of circumstances which ought to put him on inquiry that the goods in question were produced in violation of any of the provisions of the Act referred to in sections 12(a) and 15(a)(1).

These good faith provisions are reinforced by the requirement in sections 12(a) and 15(a)(1) that the purchaser must also acquire his goods “for value without notice” of an applicable violation of the Act.

To illustrate the application of the above principles, let us assume that a purchaser of goods for value acquires them in reliance upon a written assurance from the producer, manufacturer, or dealer that the particular goods were produced in compliance with all applicable requirements of the Act, and that the form and content of the assurance is sufficient to meet the conditions of sections 12 and 15(a)(1) of the Act. If a reasonable, prudent man in the purchaser's position, acting with the diligence, would have no reason to question the truth of the assurance that the applicable requirements has been complied with, the purchaser's reliance on such written assurance would be considered to be in good faith and without notice of any violation, and the purchaser would be protected in the event that violations of the child-labor or the wage-hour standards of the Act had actually occurred in the production of such goods by the vendor or by prior producers of the goods. In such circumstances, the purchaser's protection would not be contingent on his securing separate written assurances

from the prior producers or on his assuring himself that his vendor had secured specific guarantees from them with respect to compliance.

PART 790—GENERAL STATEMENT AS TO THE EFFECT OF THE PORTAL-TO-PORTAL ACT OF 1947 ON THE FAIR LABOR STANDARDS ACT OF 1938

GENERAL

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- 790.2 Interrelationship of the two Acts.
- PROVISIONS RELATING TO CERTAIN ACTIVITIES ENGAGED IN BY EMPLOYEES ON OR AFTER MAY 14, 1947
- 790.3 Provisions of the statute.
- 790.4 Liability of employer; effect of contract, custom, or practice.
- 790.5 Effect of Portal-to-Portal Act on determination of hours worked.
- 790.6 Periods within the "workday" unaffected.
- 790.7 "Preliminary" and "postliminary" activities.
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- 790.9 "Compensable * * * by an express provision of a written or nonwritten contract."
- 790.10 "Compensable * * * by a custom or practice."
- 790.11 Contract, custom or practice in effect "at the time of such activity."
- 790.12 "Portion of the day."

DEFENSE OF GOOD FAITH RELIANCE ON ADMINISTRATIVE REGULATIONS, ETC.

- 790.13 General nature of defense.
- 790.14 "In conformity with."
- 790.15 "Good faith."
- 790.16 "In reliance on."
- 790.17 "Administrative regulation, order, ruling, approval, or interpretation."
- 790.18 "Administrative practice or enforcement policy."
- 790.19 "Agency of the United States."

RESTRICTIONS AND LIMITATIONS ON EMPLOYEE SUITS

- 790.20 Right of employees to sue; restrictions on representative actions.
- 790.21 Time for bringing employee suits.
- 790.22 Discretion of court as to assessment of liquidated damages.

AUTHORITY: 52 Stat. 1060, as amended; 29 U.S.C. 201 *et seq.*

SOURCE: 12 FR 7655, Nov. 18, 1947, unless otherwise noted.

GENERAL

§ 790.1 Introductory statement.

(a) The Portal-to-Portal Act of 1947 was approved May 4, 1947.¹ It contains provisions which, in certain circumstances, affect the rights and liabilities of employees and employers with regard to alleged underpayments of minimum or overtime wages under the provisions of the Fair Labor Standards Act of 1938,² the Walsh-Healey Public Contracts Act, and the Bacon-Davis Act. The Portal Act also establishes time limitations for the bringing of certain actions under these three Acts, limits the jurisdiction of the courts with respect to certain claims, and in other respects affects employee suits and proceedings under these Acts.

For the sake of brevity, this Act is referred to in the following discussion as the Portal Act.

(b) It is the purpose of this part to outline and explain the major provisions of the Portal Act as they affect the application to employers and employees of the provisions of the Fair Labor Standards Act. The effect of the Portal Act in relation to the Walsh-Healey Act and the Bacon-Davis Act is not within the scope of this part, and is not discussed herein. Many of the provisions of the Portal Act do not apply to claims or liabilities arising out of activities engaged in after the enactment of the Act. These provisions are not discussed at length in this part.³

¹An act to relieve employers from certain liabilities and punishments under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, and the Bacon-Davis Act, and for other purposes (61 Stat. 84; 29 U.S.C., Sup., 251 *et seq.*).

²52 Stat. 1060, as amended; 29 U.S.C. 201 *et seq.* In the Fair Labor Standards Act, the Congress exercised its power over interstate commerce to establish basic standards with respect to minimum and overtime wages and to bar from interstate commerce goods in the production of which these standards were not observed. For the nature of liabilities under this Act, see footnote 17.

³Sections 790.23 through 790.29 in the prior edition of this part 790 have been omitted in this revision because of their obsolescence in that they dealt with those sections of the Act concerning activities prior to May 14,

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