

WAGE AND HOUR DIVISION
U. S. Department of Labor

LEGAL FIELD LETTER NO. 15 (Rev.)

SUBJECT: Policy with Respect to Legal Opinions
and the Computation of Restitution.

LEGAL OPINIONS

1. Legal Opinions and Enforcement Policy.

In advising inquirers as to the application of the Act and the enforcement policy of the Division, attorneys should indicate that the opinion rendered will guide the Administrator in his duties of enforcing the Act. However, in cases in which the Division is not prepared to render any opinion, the inquirer should be informed that enforcement proceedings will not be instituted unless and until a position has been taken and adequate notice given of our intention to enforce the particular interpretation. The inquirer should be informed of the rights of employees under Section 16(b) which can be independently enforced.

2. Cases Where no Position has been Taken.

A clear distinction should be made between cases where there may be doubt as to the courts' ultimate disposition of the issue — as, for example, where a wholesaler distributes entirely within the state goods received from outside the state — and a case in which the Division has taken no position, as for example, where a wholesaler distributes within the state goods received from another wholesaler within the state who obtained the goods from outside of the state. The maintenance employees in independent office buildings housing clerical employees of companies elsewhere actively engaged in commerce or in the manufacture of goods for commerce would fall in this same category. Another situation in which the Division has taken no position is set forth in paragraph 11 of Interpretative Bulletin No. 5. In this paragraph, the office of the General Counsel indicated that it is not prepared to render an opinion as to whether employees of a utility supplying power within the state to a manufacturer producing goods for interstate commerce are covered by the Act. It should be emphasized that the test is whether we have taken any position on the question raised and not whether we are certain of that position nor whether we would immediately litigate that particular case.