

The United States Department of Labor
Office of the Solicitor
Washington
April 20, 1942

LEGAL FIELD LETTER

NO. 74

SUBJECT: STATUS OF INSTALLATION AND
SERVICE EMPLOYEES UNDER THE
ACT

Employees who are engaged in installing any type of apparatus equipment or machinery, (aside from construction material such as roofing, siding, insulation, rock wool, etc.), which is sold after being received directly from other States, are performing work incidental to the sale and are, therefore, covered as being engaged in furtherance of an interstate transaction. The Act is likewise applicable to employees installing such items pursuant to an interstate contract of sale. For purposes of this field letter an interstate contract of sale is to be considered one which involves or necessarily contemplates the movement of goods across a State line.

The opinion of the Division with respect to employees engaged solely in servicing items after they have been installed may be stated as follows. In situations where employees are engaged solely in servicing items within the same State where such items have been distributed and installed, the Act does not apply. If, however, the situation is such that the servicing is properly to be regarded as incidental to the completion of an interstate contract of sale, as explained above, employees engaged in such servicing activities are covered. A typical situation of the latter type would be one in which the contract of sale contemplated that the goods would be shipped in interstate commerce or necessarily involved such interstate shipment of goods, and obliged the vendor to furnish service for a period of time after the item was installed.

These propositions, it should be emphasized, have been stated upon the assumption that no other basis exists for covering the employees in question aside from their servicing items after installation. Of course, if in a workweek a service employee engaged in other activities which were covered, such as the interstate transportation of goods, his employment would be covered for that reason. Likewise, an employee would be covered if his servicing operations were properly to be regarded as the maintenance or repair of an essential instrumentality of commerce, or of buildings or machinery used to produce goods for commerce, or of a building in which interstate commerce was carried on.

This opinion should be regarded as superseding that expressed in Legal Field Letter 26, page 24, to the extent to which it is inconsistent therewith.

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