

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS
WASHINGTON, D.C. 20210

2/11/70

10018

Enterprise Coverage - Applicable Minimum Wage

21 BJ 301.24
21 BJ 408.1
26 CD 702.12

This is in reply to your letter of December 24, 1969, concerning the application of the Fair Labor Standards Act to a corporation engaged in the wholesale-retail sale of auto parts and the operation of a garage-machine shop on the same premises.

It is reasonably clear that the two operations concerned constitute related activities performed through common control and that the dollar volume test is met for the purposes of enterprise coverage under section 3(s)(1) of the Fair Labor Standards Act. The mere fact that a concrete wall separates the two operations and that there is separate bookkeeping for cost accounting purposes is not sufficient for the operations to be considered as separate establishments on the same premises. In the absence of more specific information to the contrary, we would consider these operations as a single establishment.

You indicate that over 90 percent of the establishment's income is derived from parts sales, and that the vast majority of the parts sales are sales for resale. It is, therefore, readily apparent that such a single establishment could not be considered a retail or service establishment within the meaning of the act. Section 7(i) of the act, which applies only to commission employees of retail or service establishments would, therefore, not be available to the shop employees.

Insofar as the question of the applicable minimum wage for the shop workers is concerned, the Wage and Hour and Public Contracts Divisions have consistently held that individual coverage applies to such employees since some of the motor vehicles serviced or repaired generally travel in interstate commerce. Thus, the shop workers are engaged in the production of goods (see section 3(j) of the act) for interstate commerce

and must be paid a minimum wage of at least \$1.60 per hour and overtime compensation of not less than one and one-half times their regular rates of pay for all hours worked in excess of 40 in a workweek. The \$1.60 per hour minimum wage for individually covered and nonexempt employees would be applicable regardless of the status of the enterprise.

If you have any additional questions in this or any other matter concerning the application of the Fair Labor Standards Act, you may find it more convenient to get in touch with our Area Office at 351 New Federal Building, 400 West Bay Street, Jacksonville, Florida 32202. They will be pleased to offer every possible assistance.

Sincerely,

Robert D. Moran
Administrator

Enclosure