

U. S. DEPARTMENT OF LABOR
Workplace Standards Administration
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS

P.D.

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This is in reply to your letter of September 2, 1970 concerning the application of the Fair Labor Standards Act to the operations of the _____ in Puerto Rico. You state that it is your position that the Wage Order for the Retail Trade Industry in Puerto Rico is contrary to the policy of the act as indicated by the legislative history and Part 779 of the Rules and Regulations.

The Wage Order for the Retail Trade Industry in Puerto Rico (29 CFR 721) gives effect to the recommendations of an industry committee duly appointed under sections 5 and 8 of the act. The order was published in the Federal Register on December 13, 1968 (33 F.R. 18492) in compliance with the specific requirements of section 8(d) of the act. The act does not provide for the modification of industry committee recommendations by this Department. Instead, the act provides in section 10 that any person aggrieved by an order issued under section 8 may obtain a review of such order by filing a written petition in the appropriate court within 60 days after the entry of such order.

In the first question in your letter you ask if Part 779 of the Rules and Regulations and the legislative history of the act indicate a clear intent to provide equal treatment, with respect to the inclusion or exclusion from the act's minimum wage and overtime pay provisions, for employees in restaurants and food service employees in retail establishments.

It is correct that the act provides a separate overtime exemption for food service employees of retail establishments to assure equality in application of the overtime exemption between such employees and employees of restaurants. It is also true that identical minimum wage rates have been applicable on the mainland to both groups of employees since the Fair Labor Standards Amendments of 1956. With respect to minimum wage rates in Puerto Rico, however, the act in providing for an industry-by-industry method of fixing minimum wage rates and in providing for differential minimum rates within industries, clearly contemplates differences in minimum rates or that area.

In regard to your questions II through IV it is important to point out that all the facts and circumstances of business activities operated on the same premises are important in determining whether they are in fact separate and distinct places of business in order to reach a decision for applying the provisions of the act. Where two types of activity which are retail in nature are performed on the same premises, it becomes difficult to show that they are functionally separate from each other. Therefore, as indicated in section 779.305, two physically separated portions of a business on the same premises will not constitute separate establishments unless the operations are also functionally separated from each other. The relationship of business activities which provide goods and services at retail are functionally so close and so immediately connected with a single business purpose common to them that a mere physical separation of the various activities on the same premises, allocation of separate personnel to them, and separate record-keeping will not, as a rule, create separate and distinct places of business that can qualify as separate establishments within the meaning of the act. In economic reality such separation, as in the case of a typical department or drug store, results only in the departmentalization of a single business establishment.

On the basis of the principles discussed above, it is our opinion that the arrangement of operations in your questions III, IV, and V would constitute one establishment. However, the situation in question II where the cafeteria operation is separated from the other drug store operations by the interposition of another unassociated business establishment would constitute two establishments under the facts presented.

Sincerely,

ROBERT D. MORAN

Robert D. Moran
Administrator