

U. S. DEPARTMENT OF LABOR
WORKPLACE STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
Washington, D. C. 20210

DEC 23 1970

21 BJ 922
21 BJ 303.8

This is in reply to your letter of November 6, 1970, concerning the application of the Fair Labor Standards Act to the operations of one of your clients.

You ask whether a particular vending location in a manufacturing plant where an employee of the vending company is on duty every day to service the vending machines would be considered a separate establishment within the meaning of the Fair Labor Standards Act. It is the position of the Wage and Hour Division that the premises of a customer being serviced by an independent contractor (such as a contract vending service) would not constitute an independent establishment or a physically separate branch establishment of the contractor. This would be the case where any independent contractor (vending service, guard service, janitorial firm, accounting firm, etc.) performs a service or activity on the premises of a client or customer who has contracted to have such a function performed on their premises. Thus we would not consider the vending machine serviceman in the manufacturing plant as employed in a physically separate retail establishment.

In addition, the exemption provided in section 13(b)(18) from the Act's overtime pay provisions would not apply. One of the conditions of that exemption is for the employee to be employed by a retail or service establishment. The employee with whom you are concerned is considered to be employed by the central office where the goods are stored and its records maintained.

In your second situation, we are unable to make a definite determination as to the application of the Fair Labor Standards Act to the cafeteria operation. Whether or not the cafeteria is an integral part of the manufacturing plant establishment or whether or not any of the exemptions for retail or service establishments or for food service employees would apply must be demonstrated on the basis of all the facts. Accordingly, your attention is directed to sections 779.386 and 779.387 of our Interpretative Bulletin, Part 779.

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If you wish a more specific determination in this matter, you may find it more convenient to get in touch with our Area Office at 700 Penn Square Building, 1317 Filbert Street, Philadelphia, Pennsylvania 19107, Telephone: 215-597-4950. That office will be pleased to offer every possible assistance.

Sincerely,

Robert D. Moran
Administrator

2 Enclosures

WH-108

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