

FLSA-93

May 4, 1971

This is in reply to your letter of April 20, 1971, concerning the application of the Fair Labor Standards Act (the Federal wage and hour law) to employees employed by a florist.

The Fair Labor Standards Act applies to employees individually engaged in or producing goods for interstate commerce and to employees in certain enterprises. The act's major provisions are summarized in the enclosed Handy Reference Guide.

Generally, all employees of a florist shop having an annual dollar volume of sales made or business done in excess of \$250,000, are covered under the act if there are in the enterprise employees handling, selling, or otherwise working on goods that have moved in interstate commerce. Transactions through Florist's Telegraph Delivery across State lines are movements in interstate commerce for the purposes of coverage under the act. All employees of such a florist must be paid a minimum wage of at least \$1.60 per hour and overtime premium pay after 40 hours in a workweek, unless they come within one of the act's exemptions. The \$250,000 annual dollar volume test for enterprise coverage became effective February 1, 1969. Please note that a florist shop whose annual dollar volume does not exceed \$250,000, must still pay its nonexempt employees who individually perform work related to interstate commerce (such as FTD sales) in accordance with the pay requirements of the act, unless specifically exempt.

A florist shop which has an annual dollar volume of sales made or business done of less than \$250,000, may qualify for the complete minimum wage and overtime pay exemption provided by section 13(a)(2) of the act for employees of a retail or service establishment, if at least 75 percent of its annual dollar volume of sales are from sales which are not for resale and are recognized as retail sales in the industry (florist shops generally will meet this test), and more than 50 percent of the florist's annual dollar volume of sales are made within the State in which it is located. Interstate transactions made through Florist's Telegraph Delivery are not sales made within a State and must be counted toward determining whether or not the 50 percent tolerance on interstate sales has been exceeded.

In addition, you may wish to note that section 13(a)(1) of the act provides a complete minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, or professional capacity. The requirements for exemption under this section of the act are contained in Regulations, Part 541, a copy of which is enclosed.

If after reading the enclosed material you have any further questions concerning the application of the Fair Labor Standards Act, you may find it more convenient to get in

touch with our Area Office at . That office will be pleased to offer every possible assistance.

Sincerely,

Joseph P. McAuliffe, Director
Division of Minimum Wage
and Hour Standards

4 Enclosures