

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20110

AUG 20 1972

This is in further reply to your letter of June 30, 1972, and subsequent submissions, concerning the application of the Fair Labor Standards Act to certain employees of

The information you provided indicates that it is the position of the firm that either, (1) those employees performing work in homes for private individuals as domestics or nurse aids are not covered by the Fair Labor Standards Act by virtue of the fact that the private individual is not covered; or (2) the exemption provided under section 13(a)(2) of the Act is applicable to those local offices having an annual dollar volume of less than \$250,000 as they are retail or service establishments.

You further indicate in the material provided that the firm, together with its branches, comprise an enterprise. The employees, whether they are "in-house" employees or those assigned to various clients, are considered employees of . Thus, enterprise coverage under section 3(s)(1) of the Act is applicable to all employees.

The position of the Wage and Hour Division is that employees of a company working on assignments in various establishments are considered to be jointly employed by the company and the employer whose work they do in the establishment in which they are employed. Each is responsible for compliance with the requirements of the Act to any workweek when the employee is so employed. Therefore, where an employee is covered on an enterprise basis, he must be paid in accordance with the minimum wage and overtime pay requirements of the Act, unless an exemption applies. In any workweek in which the temporary help employee works exclusively as an employee of an establishment subject to an exemption and performs work which is within such exemption, the employee will be exempt.

Insofar as the larger question of the application of the exemption provided under section 13(a)(2) is concerned, we must reemphasize our previously stated position that a firm engaged in supplying such employees as you describe lacks the retail or service concept contemplated by that section of the Act. Although a firm may specialize in this area, the functions provided lack the traditional recognition as being retail or service activities.

Typically, the employees with whom you are concerned are domestics, babysitters, live-in companions, housekeepers, registered nurses, licensed practical nurses, nurses aids, and home health aids. We would not consider companionship to be within the retail concept. Further, we have previously taken the position that providing health services such as in a clinic away from the hospital atmosphere is not retail. The fact that the firm's employees provide such services in the home would not alter a similar conclusion that there is no retail concept in providing such services. Insofar as the ordinary domestic help is concerned we feel that there is a difference between the repairing of items used in the home as opposed to the performance of duties in operating such items by persons sent to the establishment for such duties.

Thus, it is the position of the Wage and Hour Division, after careful reconsideration of all the information provided and available, that the employees of . . . are not exempt under section 13(a)(2) of the Fair Labor Standards Act. Such employees must be paid in accordance with the monetary provisions of the Act unless otherwise exempt as previously discussed.

Sincerely,

Horace E. Menasco

Horace E. Menasco
Deputy Assistant Secretary

Enclosure

WH-17L

(4)