

FLSA-59

June 21, 1979

This is in reply to your letter of April 9, 1979, concerning the application of the Fair Labor Standards Act to certain employees of your private nonprofit organization, the *** Migrant Council. You ask if employees who provide manpower and support services are covered under the Act when they occasionally communicate or cross State lines in the performance of their duties.

The Fair Labor Standards Act is the Federal minimum wage and overtime pay law. Employees are subject to its provisions when they are individually engaged in interstate commerce or in the production of goods for interstate commerce, or when they are employed in certain enterprises. When employees occasionally cross State lines in the performance of their duties, or when the employees occasionally use the telephone for interstate communication, the employees so involved would be individually engaged in interstate commerce and subject to the minimum wage and overtime pay provisions of the Act in the workweeks when they are engaged in such activities.

In addition, the minimum wage and overtime pay provisions of the Act would also apply to all employees of your organization under its enterprise provisions, provided it has an annual dollar volume in excess of \$250,000, and has at least two employees handling, selling, or otherwise working on goods that have moved in interstate commerce. The educational, religious, and eleemosynary activities of a nonprofit organization are not included in determining enterprise coverage under the law.

You may also wish to note that because Federal funds may be granted under the Comprehensive Employment and Training Act to organizations such as yours, employees working on programs funded under that law's provisions must be paid not less than the applicable minimum wage rate, currently \$2.90 an hour, set by the Fair Labor Standards Act.

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 the Federal Building ***. That office is in a better position to ascertain all the necessary facts, and will be pleased to offer every possible assistance.

Sincerely,

Herbert J. Cohen
Assistant Administrator

Enclosure