For release A.M. Papers,
Friday, May 12, 1939

R-276

U. S. DEPARTMENT OF LABOR
Wage and Hour Division
Washington

QUESTIONS AND ANSWERS (NO. 11)

(IMPORTANT NOTE: Letters such as the accompanying were written in response to specific requests for information, and each answer has been made on the basis of the particular circumstances involved. They should not be construed as covering cases that might be regarded as similar.)

In response to a letter from a truck driver in Arkansas, Administrator Andrews replied as follows:

"Mr._____states that he is a truck driver hauling logs for a saw mill and asks the following questions:

"(1) 'I would like to have the prices on labor. What would truck driving be rated at hauling raw material?'

"The Fair Labor Standards Act merely sets certain minimum standards below which an employee engaged in interstate commerce or in the production of goods for interstate commerce cannot be employed. Thus, no employee entitled to the benefits of the Act can be paid wages at a rate less than twenty-five cents an hour during the first year of the operation of the Act. Also, no employee may be worked in excess of forty-four hours in any workweek without the payment of time and one-half overtime compensation for the excess hours. Aside from these requirements of Section 6 and Section 7, the Act leaves the determination of wage rates to the process of bargaining between the employer and his employees.

"(2) 'Am I supposed to draw time from the time I leave the saw mill until my last load is made?'

"If Mr. _____ is covered by the Act, and to aid in this determination copies of our Interpretative Bulletins Nos. 1 and 5 are enclosed, then he is entitled to be paid in accordance with the minimum wage provisions of Section 6. However, I would like to call to your attention the fact that Section 13(b)(1) of the Act exempts from the maximum-hour provisions of Section 7 thereof any employee 'with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act, 1935.' The Commission has prescribed such qualifications and maximum hours of service for truck drivers employed by common and contract carriers. Such employees, therefore, are exempt from the maximum-hour provisions of the Fair Labor Standards Act.

"However, the Commission has not, as yet, prescribed such qualifications and maximum hours of service for other employees of common and contract carriers or for truck drivers employed by private carriers. It is presently conducting an investigation to determine whether there is a need to prescribe qualifications and maximum hours of service for such employees. Until the Commission has determined that a certain group of employees are within its jurisdiction, we can but advise an employer of such employees to comply with the provisions of the Fair Labor Standards Act.

"(3) 'After working 6 hours, am I supposed to draw overtime for the rest of the hours I work that day?'

"The Act sets no limitation upon the number of hours that may be worked in any one day at straight time. So long as no more than forty-four hours are worked in any workweek, no overtime need be paid. For your further information on this question, a copy of our Interpretative Bulletin

No. 4 is enclosed."

An inquiry from a shirt company in Kentucky, received the following reply from the General Counsel's office:

"This is in reply to your letters_____, in which you state:

"'During our peak season, which lasts for about two months twice a year, we have (due to incoming orders and correspondence pertaining to them) more work in our Filing Department than throughout the balance of the year; consequently, it requires about three or four hours extra time a week to keep this work up to date.

"'This extra work can be done by the file clerk at home, inasmuch as it is a matter of sorting and putting correspondence in alphabetical order.

"'We work our file clerk 40 hours a week and are willing to pay her, on the basis of her regular hourly rate, for the additional three or four hours home work, and the question arises -- is this permissible and how can a record of her time be kept to satisfy any Governmental inquiry because,of course, we want all of our records to be in order and to comply with the Wage and Hour Law in all respects.

"'Thanking you for an opinion and awaiting your response, we are ...'

"The Fair Labor Standards Act, a copy of which is enclosed, makes no distinction in its application on the basis of where the employee works. Thus, employees otherwise coming within the terms of the Act are entitled to its benefits whether they perform their work in the factory, at home or elsewhere. A copy of our Regulations, Part 516, as amended, dealing with the

records required to be kept for industrial home workers is enclosed. Your attention is thus directed particularly to Section 516.90.

"I should like to point out that not until October 24, 1940 will the Act require time and one-half overtime compensation to be paid for hours worked in excess of forty in a week. Presently, the Act requires overtime for work in excess of forty-four hours; on October 24, 1939, the Act will require overtime to be paid after forty-two hours are worked."

An official of a State Office of Public Instruction asked an opinion regarding vocational training. The Hearings and Exemptions Section replied as follows:

"We note that you are concerned about the effect of the requirements of the Fair Labor Standards Act upon your diversified occupations program, which is apparently being conducted as part of a vocational education plan. This question is being considered, and if such consideration leads to any change in our present procedure or regulations, you and others interested will be notified.

"Meanwhile, there are certain facts that we should like to point out. You will note from the enclosed copy of the Act, that the term 'employ' is broadly defined to mean 'to suffer or permit to work'. Therefore, if a vocational student is employed as part of his training in a business engaged in interstate commerce or in the production of goods for commerce, he is employed within the meaning of the Act, and is entitled to its benefits.

"The Administrator is given power under the Act(see Section 14) to provide regulations for the employment of learners and apprentices, handicapped workers and messengers at wages less than the minimum prescribed by

the Act in order to prevent the curtailment of opportunities for employment. Copies of our regulations applicable to learners and apprentices are enclosed. As your letter of December 5 indicates, it is not likely that cooperative students in diversified occupations programs can be fitted into the category of apprentices. It is possible, in a few instances, that the work of a vocational student and his studies may be considered as part of the requirements during a period of apprenticeship. Such a case, however, would have to be worked out in an apprentice agreement approved by the Federal Committee on Apprenticeship, Room 6212, U. S. Department of Labor, Washington, D. C.

"As indicated above, we are giving this problem our attention, and if any changes should be made in our procedure or regulations, we shall be glad to let you know."

A state National Guard asked about the status of its members under the Fair Labor Standards Act and received the following reply from the General Counsel's office:

"Mr. Andrews has asked me to answer your letter . . . . . , in which you enclose a copy of a letter addressed to the War Department stating the situation with which you are confronted in view of the Fair Labor Standards Act.

"You state that it is the custom of employees belonging to the National Guard, when they take two weeks of leave each summer for field training, to have their fellow employees lengthen their hours in order to cover their absence. Since the effective date of the Fair Labor Standards Act this can only be done where the substitutes are paid time and one-half overtime compensation for all hours which they work in excess of 44 in any workweek.

"The Administrator has no power to relieve this situation. The overtime requirements of Section 7 are rigid and the Administrator is given no authority to relax them in any particular case."

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