

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington

MAKERS OF TOOLS AND DIES USED TO PRODUCE GOODS FOR INTERSTATE COMMERCE
HELD COVERED BY WAGE-HOUR LAW

After more than a year's study the Wage and Hour Division, U. S. Department of Labor, today announced that the Fair Labor Standards Act applied to employees who make tools and dies which do not move into interstate commerce themselves, but which are used in the production of goods for interstate commerce. The announcement was based on an Interpretative Bulletin issued today prepared by the office of General Counsel George A. McNulty.

"The legislative history indicates that the Act was intended to apply to employees who make or create tools, dies, patterns, designs, or blueprints, all of which are sold within the state to a local purchaser who uses the tools, dies, patterns, designs, or blueprints in the production of goods which move in interstate commerce," the Interpretative Bulletin states.

The bulletin is a revision of Interpretative Bulletin No. 5, originally issued in December, 1938, which gives the opinion of the General Counsel of the Wage and Hour Division regarding coverage of the Fair Labor Standards Act. Interpretative Bulletins indicate the legal construction of the Act which is being followed by the Administrator. In addition to the tool and die interpretation, the revised Bulletin contains various other additions and clarifications.

The paragraph dealing with this matter; as it will appear in the revised Interpretative Bulletin No. 5, reads as follows:

"11. There are cases, however, where employees producing goods for use entirely within the state of production can be said to be engaged in a 'process or occupation necessary to the production' of other goods which move out of the state of production, and are, therefore, subject to the Act. This

would be true of the employees of a tool and die concern which sells all its products within the state for use by a producer of goods for commerce. The legislative history indicates that the Act was intended to apply to employees who make or create tools, dies, patterns, designs, or blueprints, all of which are sold within the state to a local purchaser who uses the tools, dies, patterns, designs, or blueprints in the production of goods which move in interstate commerce. A much more doubtful case is the case of the small mine selling all its coal in the state to a local manufacturer engaged in the production of goods for commerce, the manufacturer using the coal to heat his plant or to drive his machinery. Are the employees of the mine engaged in a 'process or occupation necessary to the production' of the manufacturer's goods which move in interstate commerce? We feel that we should refrain from taking any position on a case which we believe to be so clearly poised on the borderline between coverage and non-coverage. We feel that no opinion can be expressed on the meaning of the words 'process or occupation necessary to the production of goods' as applied to a case such as this until the courts have at least indicated the broad outlines of the meaning to be given to this phrase."

With reference to the work of those creating designs, attention is called to the exemption provided in the Act for employees employed in a "professional" capacity which might apply to some designers.

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