

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

WAGE-HOUR HEARING ON REDEFINITION OF "EXECUTIVE", ETC. IN MANUFACTURING
AND EXTRACTIVE INDUSTRIES JUNE 3

A hearing on proposals to redefine "executive" as that term is used to describe exempt employees in the manufacturing and extractive industries under the Wage and Hour Law, will be held on Monday, June 3, 1940, at 10 a.m., at the Willard Hotel, Colonel Philip B. Fleming, Administrator of the Wage and Hour Division, U. S. Department of Labor, announced today. At the hearing the definitions of the terms "administrative", "professional" and "outside salesman" also will be reexamined. Harold Stein, Assistant Director of the Hearings Branch of the Division, will preside. (Federal Register, May 11, 1940)

This announcement was accompanied by plans for a definite schedule of hearings in the immediate future to complete the reexamination of this problem in all industries. Hearings have already been held on this subject in the wholesale distributive trades, and two other hearings will be announced soon: one on banking, brokerage, insurance, financial and related institutions; the other to cover publication, communication, public utilities, transportation and miscellaneous industries.

Colonel Fleming also announced that no changes are planned in the present definitions until this series of hearings has been completed. This is in accord with the recommendations made by many representatives of industry and all labor representatives who appeared at the hearings on the wholesale distributive phase of the problem, which were held from April 10 to April 16. At the conclusion of the series of hearings, any necessary redefinitions will be made without further delay.

For the purpose of this hearing, the manufacturing and extractive industries are defined as follows:

"As used in this notice of hearing, manufacturing and extractive industries shall include cleaning, grading, packing, canning, handling and processing of

agricultural or horticultural commodities; mining; quarrying; petroleum production; logging and lumbering; and all other manufacturing and extractive industries except publication of books, magazines and newspapers, public utilities and production of moving pictures."

The present definitions which are contained in Part 541 of the Regulations read as follows:

"Section 541.1 -- Executive and administrative.

The term 'employee employed in a bona fide executive (and administrative * * * capacity' in section 13 (a) (1) of the Act shall mean any employee whose primary duty is the management of the establishment, or a customarily recognized department thereof, in which he is employed, and who customarily and regularly directs the work of other employees therein, and who has the authority to hire and fire other employees or whose suggestions and recommendations as to the hiring and firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight, and who customarily and regularly exercises discretionary powers, and who does no substantial amount of work of the same nature as that performed by non-exempt employees of the employer, and who is compensated for his services at not less than \$30 (exclusive of board, lodging, or other facilities) for a workweek.

Section 541.2 -- Professional.

The term 'employee employed in a bona fide * * * professional * * * capacity' in section 13 (a) (1) of the Act shall mean any employee --

(a) who is customarily and regularly engaged in work --

(i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work, and

(ii) requiring the consistent exercise of discretion and judgment both as to the manner and time of performance, as opposed to work subject to active direction and supervision, and

(iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, and

(iv) based upon educational training in a specially organized body of knowledge as distinguished from a general academic education and from an apprenticeship and from training in the performance of routine mental, manual, mechanical, or physical processes in accordance with a previously indicated or standardized formula, plan or procedure, and

(b) who does no substantial amount of work of the same nature as that performed by nonexempt employees of the employer.

Section 541.3 -- Local retailing capacity.

The term 'employee employed in a bona fide * * * local retailing capacity' in section 13 (a) (1) of the Act shall mean any employee who customarily and regularly is engaged in making retail sales the greater part of which are in intrastate commerce, or who performs work immediately incidental thereto, such as the wrapping or delivery of packages, and who does no substantial amount of work of the same nature as that performed by non-exempt employees of the employer.

Section 541.4 -- Outside salesman.

The term 'employee employed * * * in the capacity of outside salesman' in section 13 (a) (1) of the Act shall mean any employee who customarily and regularly performs his work away from his employer's place or places of business, who is customarily and regularly engaged in making sales as defined in Section 3 (k) of the Act and who does no substantial amount of work of the same nature as that performed by non-exempt employees of the employer. For the purposes of this definition, recurrent routine deliveries, whether or not prior orders are placed by the purchasers, and collections, shall not be considered sales.

Section 541.5 -- Petition for amendment of regulations.

Any person wishing a revision of any of the terms of the foregoing regulations may submit in writing to the Administrator a petition setting forth the changes desired and the reasons for proposing them. If, upon inspection of the petition, the Administrator believes that reasonable cause for amendment of the regulations is set forth, the Administrator will either schedule a hearing with due notice to interested parties, or will make other provision for affording interested parties an opportunity to present their views, either in support of or in opposition to the proposed changes. In determining such future regulations, separate treatment for different industries and for different classes of employees may be given consideration.

Approved by the Administrator, October 19, 1938.
Published in the Federal Register, October 20, 1938."

##