

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

DEALERS IN AUTOMOBILES AND AUTOMOTIVE PARTS ADVISED ON COVERAGE
OF FAIR LABOR STANDARDS ACT

Further clarification of the coverage for purposes of enforcement of the Fair Labor Standards Act as applied to dealers in automobiles and automotive parts was issued today by Colonel Philip B. Fleming, Administrator of the Wage and Hour Division, in the form of a statement prepared in the office of George A. McNulty, General Counsel of the Division.

The statement supplements a recent letter dealing with retail and wholesale establishments generally. It is confined to the exemption for "retail and service establishments" provided for in the Act, as it applies to the distribution of automobiles and automotive parts.

The statement points out that the exemption provided by Section 13(a)(2) of the Act applies only to employees engaged in retail or service "establishments."

In further definition of this exemption, the statement declares that where a single motor car dealer operates two or more separate establishments, the sales of each establishment must be considered separately in order to determine whether such establishment may properly be classified as a "retail establishment" under the Act. The total sales of the enterprise as a whole will not determine the retail or non-retail character of separate establishments within the business. Employees engaged in a wholesale establishment are not exempt from the wage and hour provision even though the wholesale establishment is operated by a firm which also conducts a large retail business. Thus, for example, an automobile dealer may sell motor cars at retail in one place and automotive parts at wholesale (to garages, dealers, and fleet accounts) in a department which is distinct and separate from the retail branch -- as where a room or rooms are set aside for the selling of parts. Under these circumstances, the parts business taken alone should be considered a wholesale establishment and the exemption would not apply to employees engaged therein.

The exemption applicable to employees of "service establishments," the statement further declares, extends only to employees of establishments performing services for private consumers. Thus, employees of a garage which does work on vehicles owned by individuals for private or family use are engaged in a service establishment for purposes of the exemption. However, mechanics and service men employed in the following types of establishments are not engaged in service establishments as that term is used in Section 13(a)(2):

(a) Employees in a warehouse owned by a manufacturer or wholesale distributor engaged in servicing cars prior to their delivery to the retail establishments.

(b) Employees of a garage or service department which does work on vehicles used by transportation or hauling companies or other commercial concerns.

"Where a single establishment engages in retail selling and servicing as well as in wholesale selling (that is where these activities are not segregated)" the statement continues, "the dollar value of the retail sales and the dollar value of the servicing for private consumers may be added to ascertain the percentage of business in the exempt category. In other words, if 50 percent or more of the dollar value of total sales represents retail sales plus services for private consumers, the establishment for purposes of enforcement is deemed a retail or service establishment within the meaning of the exemption."

In the statement, Mr. McNulty informed Colonel Fleming:

"It is our opinion that retail sales will include sales of automobiles, parts, accessories, etc., to individuals for private or family use.

"The following types of sales may not properly be considered as retail sales:

"(a) Automobiles to dealers for resale.

"(b) Automobiles to commercial establishments for business or industrial use.

"(c) Parts and accessories to dealers, garages, fleet accounts, for purpose of resale, repair or replacement.

"(d) Trucks, tractors and trailers to industrial or business concerns.

"(e) Fleet sales."

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