

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington, D. C.

LANDSCAPE CONTRACTING SCHEDULED FOR SEASONAL EXEMPTION

Exemption for landscape contracting from the hours provision of the Fair Labor Standards Act as a "seasonal" industry was indicated today when Administrator Philip B. Fleming of the Wage and Hour Division, United States Department of Labor, issued a preliminary determination that a prima facie case had been made for classifying this industry as seasonal in nature. A fifteen-day period during which objectors may be heard will elapse before a final determination is made by the Administrator.

As a "seasonal" industry, landscape contracting, except in the states of California, Oregon and Washington, may be carried on for 12 hours in any workday or for 56 hours in any workweek, as the case may be, for a period or periods aggregating 14 workweeks in any calendar year, before the overtime provisions requiring payment of at least time and one-half the regular rate of pay become effective. The reason for excluding the states of California, Oregon and Washington from the proposed exemption is that the operating season in those states, because of special climatic conditions prevailing therein, can and does extend from eight to twelve months.

The term "landscape contracting" is understood to include the planting or transplanting of trees, shrubs and other plants, including the making of lawns and gardens, and the necessary coincidental building, on the site, of garden retaining walls, rock gardens, etc. It does not include routine lawn or garden maintenance except as an incident to the above during the planting season or seasons.

The Administrator's action was taken on the application of Edwin M. Tate, Landscape Contractor, Caldwell, New Jersey, and sundry other parties. (Federal Register, June 20, 1940.)