

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

MODIFIED PORTAL TO PORTAL WAGE-HOUR OPINION ANNOUNCED

Following informal fact-finding conferences on metal mining practices held in Salt Lake City and Birmingham before Harold Stein, Assistant Director of the Hearings Branch, General Philip B. Fleming, Administrator of the Wage and Hour Division, U. S. Department of Labor, announced today a modified portal to portal Wage-Hour opinion.

A summary of this opinion, contained in a report by Mr. Stein follows:

"The workday in underground metal mining starts when the miner reports for duty as required at or near the collar of the mine, and ends when he reaches the collar at the end of the shift.

"The workday also includes the aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools, and in checking in and out.

"The workday does not include any fixed lunch period of one-half hour or more during which the miner is relieved of all duties, even though the lunch period is spent underground."

The practices of the metal mining industry are so unusual that Administrator Fleming has frequently been asked to express his opinion as to the application of the general principles of determining "hours worked" to certain factual situations typical of underground metal mining. In order to base his answers to these requests on the fullest possible knowledge, an investigation was conducted including field surveys and questionnaires, reports by the Division's Regional Directors, and public conferences before Mr. Stein at Salt Lake City December 11-12, 1940, and Birmingham, January 14-15, 1941. Many supplemental statements and briefs were also filed by employers, their associations, and by unions.

The present report, on which the modified portal to portal wage-hour opinion is based, was prepared from this full record. It consists of an application of the basic principles contained in Interpretative Bulletin No. 13 of the Wage and Hour Division to the typical situations in underground metal mining. The report was reviewed and approved by the Solicitor of Labor.

In describing the practices of the industry, Mr. Stein found that working time has been computed on four different bases in different mines and with many minor variances in other mines. Mr. Stein concluded that the continued acceptance of these inconsistencies would be directly contrary to the purposes of the Act. It would also make useless the establishment by Congress of a national 40 hour standard if the standard was to be applied on a different basis in each instance.

In announcing his acceptance and approval of the report, General Fleming stated that the enforcement of the wage and hour law in the underground metal mining industry will be based on the principles contained in the report, effective April 1, 1941. General Fleming announced, however, that because the Division had not heretofore taken a definite stand on the various problems involved, it would not seek to compel the payment of restitution from mine owners who have been operating on a face to face or other bases inconsistent with the principles outlined in the report. This enforcement policy of the Division cannot, however, interfere with the rights of employees or their representatives to sue under Section 16(b) of the Fair Labor Standards Act.

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