For Release
P.M. Papers
November 18, 1947

U. S. DEPARTMENT OF LABOR
Wage and Hour and Public Contracts Divisions
Washington 25, D. C.

PR-117

PORTAL-TO-PORTAL ACT BULLETIN ISSUED BY WAGE-HOUR ADMINISTRATOR

How the Fair Labor Standards Act is affected by the Portal-to-Portal Act of 1947 is explained in an interpretative bulletin issued today by Wm. R. McComb, Administrator of the Wage and Hour and Public Contracts Divisions, U. S. Department of Labor.

Copies of the bulletin, text of which appears in the Federal Register today, are being made available at the Divisions' offices in Washington and in the various States as "a practical guide to employers and employees."

Enacted on May 14, 1947, the Portal Act was adopted by the Congress "to relieve employers from certain liabilities and punishments under the Fair Labor Standards Act * * * and for other purposes." Its provisions apply primarily to employer liability to the approximately 20 million employees in interstate commerce activities covered by the 40-cents-an-hour minimum wage, and time and one-half for overtime after 40 hours a week, provisions of the Fair Labor Standards Act. At the time of the new Act's adoption, some 1,900 individual and group employee suits were on file throughout the nation claiming back wages estimated at more than $6 billion under provisions of the Fair Labor Standards Act -- the Wage and Hour Law.

To achieve its purpose, the Portal Act includes provisions which: (1) Deal broadly with existing and potential claims for back wages covering the period before its adoption by providing for the outright dismissal of some employee suits and for compromise settlement of others; (2) establish a two-year time limitation for the filing of wage claims arising on and after its adoption, May 14, and which, in some instances, limits claims covering the period before that date to two years or less; (3) specifically guide its application to the Wage and Hour Law for the period beginning May 14.

Administrator McComb's interpretations of the new Act's application to the Wage and Hour Law, therefore, is concerned chiefly with the period beginning May 14. He explains in the bulletin, however, that the correctness of an interpretation of the new Act's meaning can be determined finally and authoritatively

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only by the courts. Thus, the bulletin is intended "to indicate the construction of the law which the Administrator believes to be correct and which will guide him in the performance of his administrative duties, under the Fair Labor Standards Act, unless and until he is directed otherwise by authoritative rulings of the courts or concludes, upon re-examination of an interpretation, that it is incorrect." As has been the practice in the past, the bulletin says the Administrator will receive and consider statements suggesting changes in his interpretations.

The bulletin points out that the Portal-to-Portal Act:

> Leaves unaffected what has been known under the Wage and Hour Law as the "workday"--the period from "whistle to whistle"--and what has been known as "hours worked" within that period.
>
> Differentiates between an employee's "principal" activity, or inactivities, and those performed "preliminary" or "postliminary" to his "workday."
>
> Does not affect an employer's liability to pay an employee for his "principal" activity, or activities.
>
> Relieves employers of liability only as to those "preliminary" or "postliminary" activities outside the "workday" for which payment is not provided by "contract, custom or practice."

In considering what constitutes "principal" activities, the bulletin refers to several guides suggested in the legislative debates on the Portal Act. These explain that, while "any work of consequence performed by an employee for an employer, no matter when the work is performed," must be included, it is necessary to give "due regard to generally established compensation practices in the particular industry and trade" concerned in each interpretation. The bulletin also holds that no one activity need necessarily be predominant over all other activities to be considered a "principal" activity--an employee may be engaged in several "principal" activities. And, the bulletin states, activities which are so closely related to a "principal" activity that they are an integral part of and are indispensable to the performance of the "principal" activity, must be considered a part of the "principal" activity, or activities. In this discussion the bulletin cites the activities of a lathe operator who may oil, grease, or clean his machine, or install a new cutting tool at the beginning of his workday. Such integral parts of the lathe operator's over-all activities make them a part of his "principal" activity, according to the bulletin.

The bulletin states that "preliminary" or "postliminary" activities include "walking, riding, or traveling to and from the actual place of performance of the principal activity or activities" at the beginning and end of the workday, as mentioned in the Portal Act. However, other activities performed before the morning whistle and after the evening whistle, such as, for instance, punching time clock, or waiting in line to be paid, the bulletin explains, also were intended to be considered "preliminary" or "postliminary" activities.

The courts and the Wage and Hour Division, before adoption of the Portal-to-Portal Act, regarded time spent by an employee in some of the activities now considered "preliminary" and "postliminary" to be part of the employee's "hours worked" and included them in computing the employee's workweek. Therefore, the bulletin says, whether activities of this type may be considered "hours worked" and included in computation of the workweek now will depend upon whether they are paid for under "contract, custom or practice" in accordance with the specific provisions laid down by the new Act.

Part of the bulletin is devoted to discussion of the Portal Act's provision that employers may in some circumstances have a so-called "good faith" defense against liability or punishment for failure to comply with the Wage and Hour Law. The bulletin warns that this defense is available only to employers who show that "the act or omission complained of was in good faith in conformity with and reliance on any administrative regulation, order, ruling, approval, or interpretation or any administrative practice or enforcement policy *** with respect to the class of employers to which he belongs."

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NOTE TO CORRESPONDENTS:

Text of the bulletin may be obtained from Don Long, Room 5408, Department of Labor Building, Extension 1385.

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