No. 1 - R-26

No. 2 - R-35

INTERPRETATIVE BULLETINS

Nos. 1 and 2

No. 1

General Statement as to the Coverage of the Fair Labor Standards Act of 1938

No. 2

Application of the Fair Labor Standards Act of 1938 to the District of Columbia and Territories and Possessions

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UNITED STATES DEPARTMENT OF LABOR

WAGE AND HOUR DIVISION

OFFICE OF THE GENERAL COUNSEL

Interpretative Bulletin No. 1—

General Statement as to the Coverage of the Fair Labor Standards Act of 1938

1. The statute does not confer upon the Administrator any general power to issue rulings including industries within the coverage of the act, or excluding them. At one stage of the legislative history, a draft of the act provided that the Administrator should hold a succession of hearings with reference to the various industries, after which hearings, if the facts warranted, he was required to issue an order declaring the industry to be an industry affecting interstate commerce; and by virtue of such order the particular industry was to come within the application of the act. No such provision was included in the bill as it finally passed. Under the act, employments are included or excluded by the terms of the statute itself as interpreted by the courts, and not by the force of any administrative action. Interpretations announced by the Administrator, except in certain specific instances where the statute directs the Administrator to make various regulations, definitions, and classifications, serve, therefore, to indicate merely the construction of the law which will guide the Administrator in the performance of his administrative duties, unless and until he is directed otherwise by authoritative ruling of the courts.

2. Under sections 6 and 7 the wage and hour provisions are applicable to employees "engaged in commerce or in the production of goods for commerce." "Commerce" is defined as trade, commerce, transportation, transmission, or communication among the several States, or from any State to any place outside thereof—or roughly, "interstate commerce." In the preliminary declaration of policy in section 2, Congress recited that it sought to remedy certain evils, namely, "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers," which Congress found "(1) causes commerce and the channels and instrumentalities of commerce to be used to perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free

flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce." From this declared policy of Congress it is evident that, apart from certain specific exemptions enumerated later in the statute, Congress intended the widest possible application of its regulatory power over interstate commerce; and the Administrator, in interpreting the statute for the purpose of performing his administrative duties, should properly lean toward a broad interpretation of the key words, "engaged in commerce or in the production of goods for commerce."

3. It is noted that the coverage as described in sections 6 and 7 does not deal in a blanket way with industries as a whole. Thus, in section 6, it is provided that every employer shall pay the statutory minimum wage to "each of his employees who is engaged in commerce or in the production of goods for commerce." It thus becomes an individual matter as to the nature of the employment of the particular employee. Some employers in a given industry may not be subject to the act at all; other employers in the industry may be subject to the act in respect to some of their employees, and not others; still other employers in the industry may be subject to the act in respect to all their employees, except those specifically exempted by the later provisions of section 13 (a).

4. The first category of workers included, those "engaged in (interstate) commerce," applies, typically but not exclusively, to employees in the telephone, telegraph, radio, and transportation industries, since these industries serve as the actual instrumentalities and channels of interstate commerce. Employees who are an essential part of the stream of interstate commerce are also included in the phrase "engaged in commerce"; for example, employees of a warehouse whose storage facilities are used in the interstate distribution of goods.

5. The second category of workers included, those engaged "in the production of goods for (interstate) commerce," applies, typically but not exclusively, to that large group of employees engaged in manufacturing, processing, or distributing plants, a part of whose goods moves in commerce out of the State in which the plant is located. This is not limited merely to employees who are engaged in actual physical work on the product itself, because by express definition in section 3 (j) an employee is deemed to have been engaged "in the production of goods, if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State." Therefore the benefits of the statute are extended to such employees as maintenance workers, watchmen, clerks, stenographers, messengers, all of whom must be considered as engaged in processes or occupations "necessary to the production" of the goods. Enterprises cannot operate

without such employees. If they were not doing work "necessary to the production" of the goods they would not be on the pay roll. Significantly, it is provided in section 15 (b) that "proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within 90 days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods." Hence, except for the special categories of employees within the exemptions of section 13, all the employees, in a place of employment where goods shipped or sold in interstate commerce were produced, are included in the coverage, unless the employer maintains the burden of establishing, as to particular employees, that their functions are so definitely segregated that they do not contribute to the production of the goods for interstate commerce as these terms are broadly defined in the act.

6. The act does not cover plants where the employees work on raw materials derived from within the State and where none of the product of the plant moves in interstate commerce. This is true, even though the product so manufactured and sold locally comes in competition with similar products which have been manufactured elsewhere and have been moved in interstate commerce. Provisions designed to include such local industries appeared in various drafts of the bill, but were stricken out and not included in the bill as it finally passed.

7. Since the act contains no prescription as to the place where the employee must work, it is evident that employees otherwise coming within the terms of the act are entitled to its benefits whether they perform their work at home, in the factory, or elsewhere.

8. The act is not limited to employees working on an hourly wage. The requirement of section 6 as to minimum wages is that the employee must be paid *at the rate of* not less than 25 cents an hour (the rate is stepped up in succeeding years). This does not mean that employees cannot be paid on a piece-work basis after October 24; it merely means that whatever the basis on which the workers are paid, whether it be monthly, weekly, or on a piece-work basis, they must receive at least the equivalent of the minimum hourly rate. Rules and regulations to be prescribed by the Administrator will provide for the keeping of records in such form as to enable compensation on a piece-work basis to be translated into terms of an hourly rate.

9. This bulletin does not deal with the various important exemptions provided in the statute. Some of these exemptions are self-executing; others call for definitions and classifications by the Administrator as to which announcements will be made as soon as possible.

Interpretative Bulletin No. 2—

Application of the Fair Labor Standards Act of 1938 to the District of Columbia and Territories and Possessions

1. Congress might have extended the act to purely local commerce within the District of Columbia, or within a Territory or possession, in virtue of the national legislative power over such political units. Congress did not do so, however. The employees must be "engaged in commerce, or in the production of goods for commerce." "Commerce" is defined in section 3 (b) as meaning "trade. commerce, transportation, transmission, or communication among the several States, or from any State to any place outside thereof." In section 3 (c) "State" is defined as meaning "any State of the United States, or the District of Columbia, or any Territory or possession of the United States."

2. Therefore, employees within the District of Columbia, and the Territories and possessions (Alaska, Hawaii, Puerto Rico, the Canal Zone, Guam, Guano Islands, Samoa, Virgin Islands) are dealt with on the same basis as employees working in any of the 48 States.

3. The Statute making no specific mention of the Philippine Islands, they are excluded from its application by virtue of the general provision in 48 U. S. C. 1003.

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