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§ 1975.4 Coverage.

(a) *General.* Any employer employing one or more employees would be an ''employer engaged in a business affecting commerce who has employees'' and, therefore, he is covered by the Act as such.

(b) *Clarification as to certain employers*—(1) *The professions, such as physicians, attorneys, etc.* Where a member of a profession, such as an attorney or physician, employs one or more employees such member comes within the definition of an employer as defined in the Act and interpreted thereunder and, therefore, such member is covered as an employer under the Act and required to comply with its provisions and with the regulations issued thereunder to the extent applicable.

(2) *Agricultural employers.* Any person engaged in an agricultural activity employing one or more employees comes within the definition of an employer under the Act, and therefore, is covered by its provisions. However, members of the immediate family of the farm employer are not regarded as employees for the purposes of this definition.

(3) *Indians.* The Williams-Steiger Act contains no special provisions with respect to different treatment in the case of Indians. It is well settled that under statutes of general application, such as the Williams-Steiger Act, Indians are treated as any other person, unless Congress expressly provided for special treatment. ''FPC v. Tuscarora Indian Nation,'' 362 U.S. 99, 115–118 (1960); ''Navajo Tribe v. N.L.R.B.,'' 288 F.2d 162, 164–165 (D.C. Cir. 1961), cert. den. 366 U.S. 928 (1961). Therefore, provided they otherwise come within the definition of the term ''employer'' as interpreted in this part, Indians and Indian tribes, whether on or off reservations, and non-Indians on reservations, will be treated as employers subject to the requirements of the Act.

(4) *Nonprofit and charitable organizations.* The basic purpose of the Williams-Steiger Act is to improve working environments in the sense that they impair, or could impair, the lives and health of employees. Therefore, certain economic tests such as whether the employer's business is operated for the purpose of making a profit or has other economic ends, may not properly be used as tests for coverage of an employer's activity under the Williams-Steiger Act. To permit such economic tests to serve as criteria for excluding certain employers, such as nonprofit and charitable organizations which employ one or more employees, would result in thousands of employees being left outside the protections of the Williams-Steiger Act in disregard of the clear mandate of Congress to assure ''every working man and woman in the Nation safe and healthful working conditions * * *''. Therefore, any charitable or non-profit organization which employs one or more employees is covered under the Williams-Steiger Act and is required to comply with its provisions and the regulations issued thereunder. (Some examples of covered charitable or non-profit organizations would be disaster relief organizations, philanthropic organizations, trade associations, private educational institutions, labor organizations, and private hospitals.)

(c) *Coverage of churches and special policy as to certain church activities*—(1) *Churches.* Churches or religious organizations, like charitable and nonprofit organizations, are considered employers under the Act where they employ one or more persons in secular activities. As a matter of enforcement policy, the performance of, or participation in, religious services (as distinguished from secular or proprietary activities whether for charitable or religion-related purposes) will be regarded as not constituting employment under the Act. Any person, while performing religious services or participating in them in any degree is not regarded as an employer or employee under the Act, notwithstanding the fact that such person may be regarded as an employer or employee for other purposes—for example, giving or receiving remuneration in connection with the performance of religious services.

(2) *Examples.* Some examples of coverage of religious organizations as employers would be: A private hospital owned or operated by a religious organization; a private school or orphanage owned or operated by a religious organization; commercial establishments of

religious organizations engaged in producing or selling products such as alcoholic beverages, bakery goods, religious goods, etc.; and administrative, executive, and other office personnel employed by religious organizations. Some examples of noncoverage in the case of religious organizations would be: Clergymen while performing or participating in religious services; and other participants in religious services; namely, choir masters, organists, other musicians, choir members, ushers, and the like.

§1975.5 States and political subdivisions thereof.

(a) *General.* The definition of the term ''employer'' in section 3(5) of the Act excludes the United States and States and political subdivisions of a State:

> (5) The term ''employer'' means a person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State.

The term ''State'' is defined as follows in section 3(7) of the Act:

> (7) The term ''State'' includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

Since States, as defined in section 3(7) of the Act, and political subdivisions thereof are not regarded as employers under section 3(5) of the Act, they would not be covered as employers under the Act, except to the extent that section 18(c)(6), and the pertinent regulations thereunder, require as a condition of approval by the Secretary of Labor of a State plan that such plan:

> (6) Contain[s] satisfactory assurances that such State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in an approved plan.

(b) *Tests.* Any entity which has been (1) created directly by the State, so as to constitute a department or administrative arm of the government, or (2) administered by individuals who are controlled by public officials and responsible to such officials or to the general electorate, shall be deemed to be a ''State or political subdivision thereof'' under section 3(5) of the Act and, therefore, not within the definition of employer, and, consequently, not subject to the Act as an employer.

(c) *Factors for meeting the tests.* Various factors will be taken into consideration in determining whether an entity meets the test discussed above. Some examples of these factors are:

> Are the individuals who administer the entity appointed by a public official or elected by the general electorate?
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> What are the terms and conditions of the appointment?
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> Who may dismiss such individuals and under what procedures?
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> What is the financial source of the salary of these individuals?
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> Does the entity earn a profit? Are such profits treated as revenue?
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> How are the entity's functions financed? What are the powers of the entity and are they usually characteristic of a government rather than a private instrumentality like the power of eminent domain?
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> How is the entity regarded under State and local law as well as under other Federal laws?
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> Is the entity exempted from State and local tax laws?
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> Are the entity's bonds, if any, tax-exempt? As to the entity's employees, are they regarded like employees of other State and political subdivisions?
>
> What is the financial source of the employee-payroll?
>
> How do employee fringe benefits, rights, obligations, and restrictions of the entity's employees compare to those of the employees of other State and local departments and agencies?

In evaluating these factors, due regard will be given to whether any occupational safety and health program exists to protect the entity's employees.

(d) *Weight of the factors.* The above list of factors is not exhaustive and no factor, isolated from the particular facts of a case, is assigned any particular weight for the purpose of a determination by the Secretary of Labor as to whether a given entity is a ''State or political subdivision of a State'' and, as such, not subject to the Act as an ''employer''. Each case must be viewed on its merits; and whether a single factor will be decisive, or whether the factors must be viewed in their