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general, all those whose work may fairly be said to be a part of their employer's production of such goods,[55] and include those whose work is closely related and directly essential thereto,[56] whether employed by the same or a different employee. (See §§ 776.17 to 776.19.) Typically, but not exclusively, this includes that large group of employees engaged in mines, oil fields, quarries, and manufacturing, processing, or distributing plants where goods are produced for commerce. The employees covered as engaged in ''production'' are not limited, however, to those engaged in actual physical work on the product itself or to those in the factories, mines, warehouses, or other place of employment where goods intended for commerce are being produced. If the requisite relationship to production of such goods is present, an employee is covered, regardless of whether his work brings him into actual contact with such goods or into the establishments where they are produced, and even though his employer may be someone other than the producer of the goods for commerce.[57] As explained more fully in the sections following, the Act's ''production'' coverage embraces many employees who serve productive enterprises in capacities which do not involve working directly on goods produced but which are nevertheless closely related and directly essential to successful operations in producing goods for interstate or foreign commerce. And as a general rule, in conformity with the provisions of the Act quoted in paragraph (a) of this section, an employee will be considered to be within the general coverage of the wage and hours provisions if he is working in a place of employment where goods sold or shipped in interstate commerce or foreign commerce are being produced, unless the employer maintains the burden of establishing that the employee's functions are so definitely segregated from such production that they should not be regarded as closely related and directly essential thereto.[58]

§ 776.16 Employment in "producing, * * * or in any other manner working on" goods.

(a) *Coverage in general.* Employees employed in ''producing, manufacturing, mining, handling, or in any other manner working on'' goods (as defined in the Act, including parts or ingredients thereof) for interstate or foreign commerce are considered actually engaged in the ''production'' of such goods, within the meaning of the Act. Such employees have been within the general coverage of the wage and hours provisions since enactment of the Act in 1938, and remain so under the Fair Labor Standards Amendments of 1949.[59]

(b) *Activities constituting actual ''production'' under statutory definition.* It will be noted that the actual productive work described in this portion of the definition of ''produced'' includes not only the work involved in making the products of mining, manufacturing, or processing operations, but also includes ''handling, transporting, or in any other manner working on'' goods. This is so, regardless of whether the goods are to be further processed or are so-called ''finished goods.'' The Supreme Court has stated that this language of the definition brings within the scope of the term ''production,'' as used in the Act, ''every step in putting the subject to commerce in a state to enter commerce,'' including ''all steps, whether manufacture or not, which lead to readiness for putting goods into the stream of commerce,'' and ''every kind of incidental operation preparatory to putting goods into the stream of commerce.''[60]

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[55] *Borden Co.* v. *Borella,* 325 U.S. 679; *Armour & Co.* v. *Wantock,* 323 U.S. 126. See also paragraph (c) of this section.

[56] *Kirschbaum* v. *Walling,* 316 U.S. 517; *Roland Electrical Co.* v. *Walling,* 326 U.S. 657; H. Mgrs. St., 1949, p. 14; Sen. St. 1949 Cong. Rec. p. 15372.

[57] *Borden Co.* v. *Borella,* 325 U.S. 679; *Roland Electrical Co.* v. *Walling.* 326 U.S. 657; *Kirschbaum* v. *Walling,* 316 U.S. 517; *Walton* v. *Southern Package Corp. 320 U.S. 540.*

[58] *Guess* v. *Montague,* 140 F. 2d 500 (C.A. 4). *Cf. Armour & Co.* v. *Wantock,* 323 U.S. 126.

[59] H. Mgrs. St., 1949, p. 14; Sen. St., 1949 Cong. Rec., p. 15372.

[60] *Western Union Tel. Co.* v. *Lenroot,* 323 U.S. 490. See, to the same effect, *Walling* v. *Friend,* 156 F. 2d 429 (C.A. 8); *Walling* v. *Commet Carriers,* 151 F. 2d 107 (C.A. 2); *Phillips* v. *Star Overall Dry Cleaning Laundry Co.,* 149 F. 2d 416 (C.A. 2); certiorari denied 327 U.S. 780;

However, where employees of a common carrier, by handling or working on goods, accomplish the interstate transit or movement in commerce itself, such handling or working on the goods is not ''production.'' The employees in that event are covered only under the phrase ''engaged in commerce.''[61]

(c) *Physical labor.* It is clear from the principles stated in paragraphs (a) and (b) of this section, that employees in shipping rooms, warehouses, distribution yards, grain elevators, etc., who sort, screen, grade, store, pack, label, address or otherwise handle or work on goods in preparation for shipment of the goods out of the State are engaged in the production of goods for commerce within the meaning of the Act.[62] The same has been held to be true of employees doing such work as handling ingredients (scrap iron) of steel used in building ships which will move in commerce;[63] handling and caring for livestock at stockyards where the livestock are destined for interstate shipment as such[64] or as meat products;[65] handling or transporting containers to be used in shipping products interstate;[66] transporting, within a single State, oil to a refinery[67] or lumber to a mill,[68] where products of the refinery or mill will be sent out of the State; transporting parts or ingredients of other types of goods or the finished goods themselves between processors, manufacturers, and storage places located in a single State, where goods so transported will leave the State in the same or an altered form;[69] and repairing or otherwise working on ships,[70] vehicles,[71] machinery,[72] clothing,[73] or other goods which may be expected to move in interstate commerce.

These examples are, of course, illustrative rather than exhaustive. Some of them relate to situations in which the handling or working on goods for interstate or foreign commerce may constitute not only ''production for commerce'' but also engaging ''in commerce'' because the activities are so closely related to commerce as to be for all practical purposes a part of it.[74] However, as noted in paragraph (b) of this section, handling or working on goods constitutes engagement in ''commerce'' only and not engagement in ''production'' of the goods when it is done by employees of a common carrier and is itself the means whereby interstate transit or movement of the goods by the carrier is accomplished. Thus,

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Walling v. *Griffin Cartage Co.,* 62 F. Supp. 396, affirmed in 153 F. 2d 587 (C.A. 6). For examples, see paragraphs (c) and (d) of this section. Employees who are not engaged in the actual production Activities described in section 3(j) of the Act are not engaged in ''production'' unless their work is ''closely related'' and ''directly essential'' to such production. See §§ 776.17–776.19.

[61] *Western Union Tel. Co.* v. *Lenroot,* 323 U.S. 490. For examples, see paragraph (c) of this section.

[62] *McComb* v. *Wyandotte Furn. Co.,* 169 F. 2d 766 (C.A. 8); *Walling* v. *Mutual Wholesale Food & Supply Co.,* 141 F. 2d 331 (C.A. 8); *West Kentucky Coal Co.* v. *Walling,* 153 F. 2d 582 (C.A. 6); *Walling* v. *Home Loose Leaf Tobacco Warehouse Co.,* 51 F. Supp. 914 (E.D. Ky.); *Walling* v. *Yeakley,* 3 W.H. Cases 27, modified and affirmed in 140 F. 2d 830 (C.A. 10); *Shain* v. *Armour & Co.,* 50 F. Supp. 907 (W.D. Ky.); *Walling* v. *McCracken County Peach Growers Assn.,* 50 F. Supp. 900 (W.D. Ky). See also *Clyde* v. *Broderick,* 144 F. 2d 348 (C.A. 10).

[63] *Bracey* v. *Luray,* 138 F. 2d 8 (C.A. 4).

[64] *Walling* v. *Friend,* 156 F. 2d 429 (C.A. 8).

[65] *Fleming* v. *Swift & Co.,* 41 F. Supp. 825, affirmed in 131 F. 2d 249 (C.A. 7); *McComb* v. *Benz Co.,* 9 W.H. Cases 277 (S.D. Ind.).

[66] *Walling* v. *Villaume Box & Lbr. Co.,* 58 F. Supp. 150 (D. Minn.).

[67] *Mid-Continent Pipe Line Co.* v. *Hargrave,* 129 F. 2d 655 (C.A. 10); *Boling* v. *R. J. Allison Co., Inc.,* 4 W.H. Cases 500 (N.D. Okla.).

[68] *Hanson* v. *Lagerstrom,* 133 F. 2d 120 (C.A. 8).

[69] *Walling* v. *Griffin Cartage Co.,* 62 F. Supp. 696, affirmed in 153 F. 2d 587 (C.A. 6); *Walling* v. *Comet Carriers,* 151 F. 2d 107 (C.A. 2).

[70] *Slover* v. *Walthen,* 140 F. 2d 258 (C.A. 4).

[71] *Hertz Drivurself Stations* v. *United States,* 150 F. 2d 923 (C.A. 8); *Walling* v. *Armbruster,* 51 F. Supp. 166 (W.D. Ark.); *McComb* v. *Weller,* 9. W.H. Cases 53 (W.D. Tenn.), 17 Labor Cases (CCH) par. 65, 332; *Walling* v. *Strum & Sons,* 6 W.H. Cases 131 (D. N.J.), 11 Labor Cases (CCH) par. 63, 249.

[72] *Engebretson* v. *Albrecht,* 150 F. 2d 602 (C.A. 7); *Guess* v. *Montague,* 140 F. 2d 500 (C.A. 4).

[73] *Walling* v. *Belikoff,* 147 F. 2d 1008 (C.A. 2); *Campbell* v. *Zavelo,* 243 Ala. 361, 10 So. 2d 29; *Phillips* v. *Star Overall Dry Cleaning Laundry Co.,* 149 F. 2d 416 (C.A. 2), certiorari denied 327 U.S. 780.

[74] *Slover* v. *Walthen,* 140 F. 2d 258 (C.A. 4); *Hertz Drivurself Stations* v. *United States,* 150 F. 2d 923 (C.A. 8); *Engebretson* v. *Albrecht,* 150 F. 2d 602 (C.A. 7); *Walling* v. *Strum & Sons,* 6 W.H. Cases 131 (D. N.J.).

employees of a telegraph company preparing messages for interstate transmission, television cameramen photographing sports or news events for simultaneous viewing at television receiving sets in other State, and railroad train crews or truck drivers hauling goods from one State to another are not engaged in the ''production'' of goods by virtue of such activities, but are covered by the Act only as employees ''engaged in commerce.''

(d) *Nonmanual work.* The ''production'' described by the phrase ''producing * * * or in any other manner working on'' goods includes not only the manual, physical labor involved in processing and working on the tangible products of a producing enterprise, but equally the administration, planning, management, and control of the various physical processes together with the accompanying accounting and clerical activities.[75] An enterprise producing goods for commerce does not accomplish the actual production of such goods solely with employees performing physical labor on them. Other employees may be equally important in actually producing the goods, such as employees who conceive and direct policies of the enterprise; employees who dictate, control, and coordinate the steps involved in the physical production of goods; employees who maintain detailed and meticulous supervision of productive activities; and employees who direct the purchase of raw materials and supplies, the methods of production, the amounts to be produced, the quantity and character of the labor, the safety measures, the budgeting and financing, the labor policies, and the maintenance of the plants and equipment. (For regulations governing exemption from the wage and hours provisions of employees employed in a bona fide executive, administrative, or professional capacity, see part 541 of this chapter.) Employees who perform these and similar activities are an integral part of the coordinated productive pattern of a modern industrial organization. The Supreme Court of the United States has held that from a productive standpoint and for purposes of the Act the employees who perform such activities ''are actually engaged in the production of goods for commerce just as much as are those who process and work on the tangible products'' in the manufacturing plant or other producing facilities of the enterprise.[76]

§ 776.17 Employment in a "closely related process or occupation directly essential to" production of goods.

(a) *Coverage in general.* Employees who are not actually ''producing * * * or in any other manner working on'' goods for commerce are, nevertheless, engaged in the ''production'' of such goods within the meaning of the Act and therefore within its general coverage if they are employed ''in any closely related process or occupation directly essential to the production thereof, in any State.''[77] Prior to the Fair Labor Standards Amendments of 1949, this was true of employees engaged ''in any process or occupation necessary to the production'' of goods for commerce. The amendments deleted the word ''necessary'' and substituted the words ''closely related'' and ''directly essential'' contained in the present law. The words ''directly essential'' were adopted by the Conference Committee in lieu of the word ''indispensable'' contained in the amendments as first passed by the House of Representatives. Under the amended language, an employee is covered if the process or occupation in which he is employed is both ''closely related'' and ''directly essential'' to the production of goods for interstate or foreign commerce.

The legislative history shows that the new language in the final clause of section 3(j) of the Act is intended to narrow, and to provide a more precise guide to, the scope of its coverage with respect to employees (engaged neither

[75] *Borden Co.* v. *Borella,* 325 U.S. 679; *Hertz Drivurself Stations.* v. *United States,* 150 F. 2d 923 (C.A. 8); *Callus* v. *10 E. 40th St. Bldg.,* 146 F. 2d 438 (C.A. 2), reversed on other grounds in 325 U.S. 578.

[76] *Borden Co.* v. *Borella,* 325 U.S. 679, 683.

[77] If coverage of an employee is determined to exist on either basis, it is, of course, not necessary to determine whether the employee would also be covered on the other ground. See *Warren-Bradshaw Drilling Co.* v. *Hall,* 124 F. 2d 42 (C.A. 5), affirmed in 317 U.S. 88.