

the employment by an employer of oppressive child labor in commerce or in the production of goods for commerce, is similar to the wage and hours coverage provisions, which include employees engaged in commerce or in the production of goods for commerce or employed in enterprises having employees so engaged. The other provision (section 12(a)), however, differs fundamentally in its basic concepts of coverage from the wage and hours provisions, as will be explained in §§ 570.104 to 570.111.

(c) Another distinction is that the exemptions provided by the Act from the minimum wage and/or overtime provisions are more numerous and differ from the exemptions granted from the child labor provisions. There are only four specific child labor exemptions of which only one applies to the minimum wage and overtime pay requirements as well. This is the exemption for employees engaged in the delivery of newspapers to the consumer.³ With this exception, none of the specific exemptions from the minimum wage and/or overtime pay requirements applies to the child labor provisions. However, it should be noted that the exclusion of certain employers by section 3(d)⁴ of the Act applies to the child labor provisions as well as the wage and hours provisions.

[16 FR 7008, July 20, 1951. Redesignated at 28 FR 1634, Feb. 21, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]

EFFECTIVE DATE NOTE: At 75 FR 28458, May 20, 2010, § 570.103 was amended by revising paragraph (c), effective July 19, 2010. For the convenience of the user, the revised text is set forth as follows:

§ 570.103 Comparison with wage and hour provisions.

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³Section 13(d) of the Act.

⁴Section 13(d) defines “employer” to include “any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization”.

(c) Another distinction is that the exemptions provided by the Act from the minimum wage and/or overtime provisions are more numerous and differ from the exemptions granted from the child labor provisions. There are only eight specific child labor exemptions of which only two apply to the minimum wage and overtime pay requirements as well. These are the exemptions for employees engaged in the delivery of newspapers to the consumer and homeworkers engaged in the making of wreaths composed principally of evergreens.³ Apart from these two exceptions, none of the specific exemptions from the minimum wage and/or overtime pay requirements applies to the child labor provisions. However, it should be noted that the exclusion of certain employers by section 3(d)⁴ of the Act applies to the child labor provisions as well as the wage and hours provisions.

COVERAGE OF SECTION 12(a)

§ 570.104 General.

Section 12(a) of the Act provides as follows:

No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within 30 days prior to the removal of such goods therefrom any oppressive child labor has been employed: *Provided*, That any such shipment or delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of this section, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited by this subsection: *And provided further*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

³Both of these exemptions are contained in section 13(d) of the FLSA.

⁴Section 3(d) defines ‘employer’ as including “any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.”

§ 570.105

In determining the applicability of this provision, consideration of the meaning of the terms used is necessary. These terms are discussed in §§ 570.105 to 570.111, inclusive.

§ 570.105 “Producer, manufacturer, or dealer”.

It will be observed that the prohibition of section 12(a) with respect to certain shipments or deliveries for shipment is confined to those made by producers, manufacturers, and dealers. The terms “producer, manufacturer, or dealer” used in this provision are not expressly defined by the statute. However, in view of the definition of “produced” in section 3(j), for purposes of this section a “producer” is considered to be one who engages in producing, manufacturing, handling or in any other manner working on goods in any State.⁵ Since manufacturing is considered a specialized form of production, the word “manufacturer” does not have as broad an application as the word “producer.” Manufacturing generally involves the transformation of raw materials or semifinished goods into new or different articles. A person may be considered a “manufacturer” even though his goods are made by hand, as is often true of products made by homeworkers. Moreover, it is immaterial whether manufacturing is his sole or main business. Thus, the term includes retailers who, in addition to retail selling, engage in such manufacturing activities as the making of slip-covers or curtains, the baking of bread, the making of candy, or the making of window frames. The word “dealer” refers to anyone who deals in goods (as defined in section 3(i) of the Act),⁶ including persons engaged in buying, selling, trading, distributing, delivering, etc. It includes middlemen, factors, brokers, commission merchants, wholesalers, retailers and the like.

§ 570.106 “Ship or deliver for shipment in commerce”.

(a) Section 12(a) forbids producers, manufacturers, and dealers to “ship or

⁵For a discussion of the definition of “produced” as it relates to section 12(a), see § 570.108.

⁶See § 570.107.

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deliver for shipment in commerce” the goods referred to therein. A producer, manufacturer, or dealer may “ship” goods in commerce either by moving them himself in interstate or foreign commerce or by causing them to so move, as by delivery to a carrier.⁷ Thus, a baker “ships” his bread in commerce whether he carries it in his own truck across State lines or sends it by contract or common carrier to his customers in other States. The word “ship” must be applied in its ordinary meaning. For example, it does not apply to the transmission of telegraphic messages.⁸

(b) To “deliver for shipment in commerce” means to surrender the custody of goods to another under such circumstances that the person surrendering the goods knows or has reason to believe that the goods will later be shipped in commerce.⁹ Typical is the case of a Detroit manufacturer who delivers his goods in Detroit to a distributor who, as the manufacturer is well aware, will ship the goods into another State. A delivery for shipment in commerce may also be made where raw materials are delivered by their producer to a manufacturer in the same State who converts them into new products which are later shipped across State lines. If the producer in such case is aware or has reason to believe that the finished products will ultimately be sent into another State, his delivery of the raw materials to the manufacturer is a delivery for shipment in commerce. Another example is a paper box

⁷Section 3(b) of the Act defines “commerce” to mean “trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.”

⁸*Western Union Telegraph Co. v. Lenroot*, 323 U.S. 490.

⁹*Tobin v. Grant*, N. D. Calif., 79 Sup. 975 which was a suit for injunction by the Secretary of Labor against a manufacturer of books and book covers employing oppressive child labor. The facts showed that the manufactured articles sold by defendant to purchasers in the same State had an ultimate out-of-State destination which was manifest to defendant. The court construed the words “deliver for shipment in commerce” as sufficiently broad to cover this situation even though the purchasers acquired title to the goods.