

Wage and Hour Division, Labor

§ 776.8

§ 776.7 Geographical scope of coverage.

(a) The geographical areas within which the employees are to be deemed "engaged in commerce or in the production of goods for commerce" within the meaning of the Act, and thus within its coverage are governed by definitions in section 3 (b), (c), and (j). In the definition of "produced" in section 3(j), "production" is expressly confined to described employments "in any State." (See § 776.15 (a).) "Commerce" is defined to mean described activities "among the several States or between any State and any place outside thereof." (See § 776.8.) "State" is defined in section 3(c) to mean "any State of the United States or the District of Columbia or any Territory or possession of the United States."

(b) Under the definitions in paragraph (a) of this section, employees within the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462, 43 U.S.C. 1331); American Samoa; Guam; Wake Island; Enewetok Atoll; Kwajalein Atoll; Johnston Island; and the Canal Zone are dealt with on the same basis as employees working in any of the 50 States.²⁰ Congress did not exercise the

²⁰ An amendment to the Fair Labor Standards Act of 1938, 71 Stat. 514 (approved Aug. 30, 1957) provides that no employer shall be subject to any liability or punishment under the Act with respect to work performed at any time in work places excluded from the Act's coverage by this law or for work performed prior to Nov. 29, 1957, on Guam, Wake Island, or the Canal Zone; or for work performed prior to the establishment, by the Secretary, of a minimum wage rate applicable to such work in American Samoa. Work performed by employees in "a work place within a foreign country or within territory under the jurisdiction of the United States" other than those enumerated in this paragraph is exempt by this amendment from coverage under the Act. When part of the work performed by an employee for an employer in any workweek is covered work performed in any State, it makes no difference where the remainder of such work is performed; the employee is entitled to the benefits of the Act for the entire workweek unless he comes within some specific exemption. The reference in 71 Stat. 514 to liability for work performed in American Samoa is an

national legislative power over the District of Columbia or the Territories or possessions referred to by extending the Act to purely local commerce within them.

[15 FR 2925, May 17, 1950, as amended at 35 FR 5543, Apr. 3, 1970]

ENGAGING "IN COMMERCE"

§ 776.8 The statutory provisions.

(a) The activities constituting "commerce" within the meaning of the phrase "engaged in commerce" in sections 6 and 7 of the Act are defined in section 3(b) as follows:

Commerce means trade, commerce, transportation, transmission, or communication among the several States, or between any State and any place outside thereof.²¹

As has been noted in § 776.7, the word "State" in this definition refers not only to any of the fifty States but also to the District of Columbia and to any Territory or possession of the United States.

(b) It should be observed that the term *commerce* is very broadly defined. The definition does not limit the term to transportation, or to the "commercial" transactions involved in "trade," although these are expressly included. Neither is the term confined to commerce in "goods." Obviously, "transportation" or "commerce" between any State and any place outside its boundaries includes a movement of persons as well as a movement of goods. And "transmission" or "communication" across State lines constitutes "commerce" under the definition, without reference to whether anything so transmitted or communicated is "goods."²²

The inclusion of the term "commerce" in the definition of the same term as used in the Act implies that no special or limited meaning is intended; rather, that the scope of the term for purposes of the Act is at least as broad as it

extension of the relief granted by the American Samoa Labor Standards Amendments of 1956 (29 U.S.C. Supp. IV, secs. 206, 213, and 216).

²¹ As amended by section 3(a) of the Fair Labor Standards Amendments of 1949.

²² "Goods" is, however, broadly defined in the Act. See § 776.20(a).

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would be under concepts of “commerce” established without reference to this definition.

§ 776.9 General scope of “in commerce” coverage.

Under the definitions quoted above, it is clear that the employees who are covered by the wage and hours provisions of the Act as employees “engaged in commerce” are employees doing work involving or related to the movement of persons or things (whether tangibles or intangibles, and including information and intelligence) “among the several States or between any State and any place outside thereof.”²³ Although this does not include employees engaged in activities which merely “affect” such interstate or foreign commerce, the courts have made it clear that coverage of the Act based on engaging in commerce extends to every employee employed “in the channels of” such commerce or in activities so closely related to such commerce, as a practical matter, that they should be considered a part of it.²⁴ The courts have indicated that the words “in commerce” should not be so limited by construction as to defeat the purpose of Congress, but should be interpreted in a manner consistent with their practical meaning and effect in the particular situation. One practical question to be asked is whether, without the particular service, interstate or foreign commerce would be impeded, impaired, or abated;²⁵ others are whether the service contributes materially to the consummation of transactions in interstate or foreign com-

²³ “Any place outside thereof” is not limited in meaning to another State or country. Any movement between a State and a place “outside thereof” is “commerce” for purposes of the Act, such as ship-to-shore communication, or transportation out of a State by ship of food, fuel, or ice to be consumed at sea before arrival at another port.

²⁴ *Walling v. Jacksonville Paper Co.*, 317 U.S. 564; *Overstreet v. North Shore Corp.*, 318 U.S. 125; *McLeod v. Threlkeld*, 319 U.S. 491; *Boutell v. Walling*, 327 U.S. 463; *Pedersen v. J. F. Fitzgerald Constr. Co.*, 318 U.S. 740 and 324 U.S. 720.

²⁵ *Republic Pictures Corp. v. Kappler*, 151 F. 2d 543 (C.A. 8), affirmed 327 U.S. 757; *New Mexico Public Service Co. v. Engel*, 145 F. 2d 636 (C.A. 10).

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merce²⁶ or makes it possible for existing instrumentalities of commerce²⁷ to accomplish the movement of such commerce effectively and to free it from burdens or obstructions.²⁸

§ 776.10 Employees participating in the actual movement of commerce.

(a) Under the principles stated in § 776.9, the wage and hours provisions of the Act apply typically, but not exclusively, to employees such, as those in the telephone,²⁹ telegraph,³⁰ television, radio,³¹ transportation and shipping³² industries, since these industries serve as the actual instrumentalities and channels of interstate and foreign commerce. Similarly, employees of such businesses as banking, insurance, newspaper publishing,³³ and

²⁶ *Walling v. Sondock*, 132 F. 2d 77 (C.A. 5), certiorari denied 318 U.S. 772. See also *Horton v. Wilson & Co.*, 223 N.C. 71, 25 S.E. 2d 437, in which the court stated that an employee is engaged “in commerce” if his services—not too remotely but substantially and directly—aid in such commerce as defined in the Act.

²⁷ For a list of such instrumentalities, see § 776.11.

²⁸ *Overstreet v. North Shore Corp.*, 318 U.S. 125; *J. F. Fitzgerald Constr. Co. v. Pedersen*, 324 U.S. 720; *Ritch v. Puget Sound Bridge & Dredging Co.*, 156 F. 2d 334 (C.A. 9); *Walling v. McCrady Constr. Co.*, 156 F. 2d 932 (C.A. 3); *Bennett v. V. P. Loftis*, 167 F. 2d 286 (C.A. 4); *Walling v. Patton-Tully Transp. Co.*, 134 F. 2d 945 (C.A. 6).

²⁹ *Schmidt v. Peoples Telephone Union of Maryville, Mo.*, 138 F. 2d 13 (C.A. 8); *North Shore Corp. v. Barnett*, 143 F. 2d 172 (C.A. 5); *Strand v. Garden Valley Telephone Co.*, 51 F. Supp. 898 (D. Minn.).

³⁰ *Western Union Telegraph Co. v. Lenroot*, 323 U.S. 490; *Western Union Telegraph Co. v. McComb*, 165 F. 2d 65 (C.A. 6), certiorari denied 333 U.S. 862; *Moss v. Postal Telegraph Cable Co.*, 42 F. Supp. 807 (M.D. Ga.).

³¹ *Wilson v. Shuman*, 140 F. 2d 644 (C.A. 8); *Wabash Radio Corp. v. Walling*, 162 F. 2d 391 (C.A. 6).

³² *Overnight Motor Co. v. Missel*, 316 U.S. 572; *Hargis v. Wabash R. Co.*, 163 F. 2d 607 (C.A. 7); *Rockton & Rion R.R. v. Walling* 146 F. 2d 111 (C.A. 4), certiorari denied 334 U.S. 880; *Walling v. Keansburg Steamboat Co.*, 162 F. 2d 405 (C.A. 3); *Knudsen v. Lee & Simmons*, 163 F. 2d 95 (C.A. 2); *Walling v. Southwestern Greyhound Lines*, 65 F. Supp. 52 (W.D. Mo.); *Walling v. Atlantic Greyhound Corp.*, 61 F. Supp. 992 (E.D. S.C.).

³³ *Sun Pub. Co. v. Walling*, 140 F. 2d 445 (C.A. 6), certiorari denied 322 U.S. 728. See also