

## § 783.5

issued by the Administrator on the advice of the Solicitor of Labor, as authorized by the Secretary (reorg. Pl. 6 of 1950, 64 Stat. 1263; Gen. Ord. 45A, May 24, 1950, 15 FR 3290). As included in this part, these interpretations are believed to express the intent of the law as reflected in its provisions and as construed by the courts and evidenced by its legislative history. References to pertinent legislative history are made in this part where it appears that they will contribute to a better understanding of the interpretations.

### § 783.5 Interpretations made, continued, and superseded by this part.

On and after publication of this part 783 in the FEDERAL REGISTER, the interpretations contained therein shall be in effect and shall remain in effect until they are modified, rescinded or withdrawn. This part supersedes and replaces the interpretations previously published in the FEDERAL REGISTER and Code of Federal Regulations as part 783 of this chapter. Prior opinions, rulings, and interpretations and prior enforcement policies which are not inconsistent with the interpretations in this part or with the Fair Labor Standards Act as amended by the Fair Labor Standards Amendments of 1961 are continued in effect; all other opinions, rulings, interpretations, and enforcement policies on the subjects discussed in the interpretations in this part are rescinded and withdrawn. The interpretations in this part provide statements of general principles applicable to the subjects discussed and illustrations of the application of these principles to situations that frequently arise. They do not and cannot refer specifically to every problem which may be met by employers and employees in the application of the Act. The omission to discuss a particular problem in this part or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor or the Administrator with respect to such problem or to constitute an administrative interpretation or practice or enforcement policy. Questions on matters not fully covered by this part may be addressed to the Administrator of the Wage and Hour Division, U.S. Department of

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Labor, Washington, DC 20210, or to any Regional Office of the Division.

### SOME BASIC DEFINITIONS

### § 783.6 Definitions of terms used in the Act.

The meaning and application of the provisions of law discussed in this part depend in large degree on the definitions of terms used in these provisions. The Act itself defines some of these terms. Others have been defined and construed in decisions of the courts. In the following sections some of these basic definitions are set forth for ready reference in connection with the part's discussion of the various provisions in which they appear. These definitions and their application are further considered in other statements of interpretations to which reference is made, and in the sections of this part where the particular provisions containing the defined terms are discussed.

### § 783.7 "Employer", "employee", and "employ".

The Act's major provisions impose certain requirements and prohibitions on every "employer" subject to their terms. The employment by an "employer" of an "employee" is, to the extent specified in the Act, made subject to minimum wage and overtime pay requirements and to prohibitions against the employment of oppressive child labor. The Act provides its own definitions of "employer", "employee", and "employ", under which "economic reality" rather than "technical concepts" determines whether there is employment subject to its terms (*Goldberg v. Whitaker House Cooperative*, 366 U.S. 28; *United States v. Silk*, 331 U.S. 704; *Rutherford Food Corp. v. McComb*, 331 U.S. 772). An "employer", as defined in section 3(d) of the Act, "includes 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". An "employee", as defined in section 3(e) of

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the Act, "includes any individual employed by an employer", and "employ", as used in the Act, is defined in section 3(g) to include "to suffer or permit to work". It should be noted, as explained in part 791 of this chapter, dealing with joint employment, that in appropriate circumstances two or more employers may be jointly responsible for compliance with the statutory requirements applicable to employment of a particular employee. It should also be noted that "employer", "enterprise", and "establishment" are not synonymous terms, as used in the Act. An employer may have an enterprise with more than one establishment, or he may have more than one enterprise, in which he employs employees within the meaning of the Act. Also, there may be different employers who employ employees in a particular establishment or enterprise.

**§ 783.8 "Person".**

As used in the Act (including definition of "enterprise" set forth below in § 783.9), "person" is defined as meaning "an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons" (Act, section 3(a)).

**§ 783.9 "Enterprise".**

The term "enterprise" which may, in some situations, be pertinent in determining coverage of this Act of employees employed by employers on vessels, is defined in section 3(r) of the Act. Section 3(r) states:

Enterprise means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor \* \* \*.

The scope and application of this definition is discussed in part 776 of this chapter and in §§ 779.200 through 779.235 of this chapter.

**§ 783.10 "Establishment".**

As used in the Act (including the provision quoted below in § 783.11), the term "establishment", which is not specifically defined therein, refers to a "distinct physical place of business" rather than to "an entire business or enterprise" which may include several separate places of business. This is consistent with the meaning of the term as it is normally used in business and in government, is judicially settled, and has been recognized in the Congress in the course of enactment of amendatory legislation (*Phillips v. Walling* 334 U.S. 490; *Mitchell v. Bekins Van & Storage Co.*, 352 U.S. 1027; 95 Cong. Rec. 12505, 12579, 14877; H. Rept. No. 1453, 81st Cong., 1st sess. p. 35). This is the meaning of the term as used in sections 3(r), 3(s), and 6(b) of the Act. An establishment may have employees employed away from the establishment as well as within it (H. Rept. No. 1453, supra).

**§ 783.11 "Enterprise engaged in commerce or in the production of goods for commerce".**

Portions of the definition of "enterprise engaged in commerce or in the production of goods for commerce" (Act section 3(s)) which may in some situations determine the application of provisions of the Act to employees employed by employers on vessels are as follows:

(s) "Enterprise engaged in commerce or in the production of goods for commerce" means any of the following in the activities of which employees are so engaged, including employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce by any person:

\* \* \* \* \*

(3) any establishment of any such enterprise \* \* \* which has employees engaged in commerce or in the production of goods for commerce if the annual gross volume of sales of such enterprise is not less than \$1,000,000.

\* \* \* \* \*

The application of this definition is considered in part 776 of this chapter.