

Wage and Hour Division, Labor

§ 789.0

and distributes it in any way he chooses to the crew members. Similarly, it will make no difference if the hiring, firing, and supervising of the crew members is left in the hands of the crew boss. (See *Tobin v. LaDuke*, 190 F. 2d 977 (C.A. 9); *Tobin v. Anthony-Williams Mfg. Co.*, 196 F. 2d 547 (C.A. 8).)

§ 788.17 Employees employed in both exempt and nonexempt work.

The exemption for an employee employed in exempt work will be defeated in any workweek in which he performs a substantial amount of nonexempt work. For enforcement purposes nonexempt work will be considered substantial in amount if more than 20 percent of the time worked by the employee in a given workweek is devoted to such work. Where two types of work cannot be segregated, however, so as to permit separate measurement of the time spent in each, the employee will not be exempt.

§ 788.18 Preparing other forestry products.

As used in the exemption, other forestry products means plants of the forest and the natural properties or substances of such plants and trees. Included among these are decorative greens such as holly, ferns, roots, stems, leaves, Spanish moss, wild fruit, and brush. Christmas trees are only included where they are gathered in the wild from forests or from uncultivated land and not produced through the application of extensive agricultural or horticultural techniques. See 29 CFR 780.205 for further discussion. Gathering and preparing such forestry products as well as transporting them to the mill, processing plant, railroad, or other transportation terminal are among the described operations. Preparing such forestry products does not include operations that change the natural physical or chemical condition of the products or that amount to extracting (as distinguished from gathering) such as shelling nuts, or that mash berries to obtain juices.

[73 FR 77239, Dec. 18, 2008. Redesignated at 74 FR 26015, May 29, 2009]

EFFECTIVE DATE NOTE: At 74 FR 26015, May 29, 2009, § 788.10 was redesignated as § 788.18

and newly designated § 788.18 was suspended, effective June 29, 2009.

PART 789—GENERAL STATEMENT ON THE PROVISIONS OF SECTION 12(a) AND SECTION 15(a)(1) OF THE FAIR LABOR STANDARDS ACT OF 1938, RELATING TO WRITTEN ASSURANCES

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AUTHORITY: 52 Stat. 1060, as amended; 29 U.S.C. 201-219.

SOURCE: 15 FR 5047, Aug. 5, 1950, unless otherwise noted.

§ 789.0 Introductory statement.

(a) Section 12(a) and section 15(a)(1) of the Fair Labor Standards Act of 1938¹ (hereinafter referred to as the (Act) contain certain prohibitions against putting into interstate or foreign commerce any goods ineligible for shipment (commonly called “hot goods”), in the production of which the child-labor or wage-hour standards of the Act were not observed. These sections were amended by the Fair Labor Standards Amendments of 1949² to provide, among other things, protection against these “hot goods” prohibitions

¹Pub. L. 718, 75th Cong., 3d sess. (52 Stat. 1060), as amended by the Act of June 26, 1940 (Pub. Res. No. 88, 76th Cong., 3d sess., 54 Stat. 616); by Reorganization Plan No. 2 (60 Stat. 616); by Reorganization Plan No. 2 (60 Stat. 1095), effective July 16, 1946; by the Portal-to-Portal Act of 1947, approved May 14, 1947 (61 Stat. 84); by the Fair Labor Standards Amendments of 1949, approved October 26, 1949 (Pub. L. 393, 81st Cong., 1st sess., 63 Stat. 910); by Reorganization Plan No. 6 of 1950 (15 FR 3174), effective May 24, 1950; and by the Fair Labor Standards Amendments of 1955, approved August 12, 1955 (Pub. L. 381, 84th Cong., 1st sess., C. 867, 69 Stat. 711).

²Pub. L. 393, 81st Cong., 1st sess. 963 Stat. 910.

with respect to purchasers “who acquired such goods for value without notice of such violation” if they did so “in good faith in reliance on” a specified “written assurance.”

(b) These amendments to the Act relating to purchasers in good faith and written assurances are for the protection of purchasers. The Act does not provide that a purchaser must secure such an assurance or that a supplier must give it. The amendments confer no express authority for the Department of Labor to require the use of these assurances or to prescribe their form or content. Whether any particular written assurance affords the statutory protection to a purchaser who acquires his goods in good faith and for value without notice of an applicable violation, is left for determination by the courts. Opinions issued by the Department of Labor on this question are advisory only and represent simply the Department’s best judgment as to what the courts may hold.

(c) The interpretations contained in this general statement are confined to the statutory protection accorded these purchasers in section 12(a) and section 15(a)(1) of the Act. These interpretations, with respect to this protection of purchasers, indicate the construction of the law which the Secretary of Labor and the Administrator of the Wage and Hour Division³ believe to be correct and which will guide them in the performance of their administrative duties under the Act unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon re-examination of an interpretation, that it is incorrect.

[15 FR 5047, Aug. 5, 1950, as amended at 21 FR 1450, Mar. 6, 1956]

§ 789.1 Statutory provisions and legislative history.

Section 12(a) of the Act provides, in part that 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. Section 12(a) then provides an exception from this prohibition in the following language:

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 * * *.

Section 15(a)(1) provides, in part, that it shall be unlawful for any person to transport, offer for transportation, ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6 or 7 of the Act or any regulation or order of the Administrator issued under section 14. Section 15(a)(1) also provides the following exception with respect to this “hot goods” restriction:

* * * any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of the Act, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful.

The most important portion of the legislative history of those provisions in sections 12(a) and 15(a)(1) which relate to the protection of purchasers is found in the following discussion of the amendment to section 15(a)(1), contained in the Statement of the Managers on the part of the House appended to the Conference Report on the Fair Labor Standards Amendments of 1949:⁴

This provision protects an innocent purchaser from an unwitting violation and also protects him from having goods which he has purchased in good faith ordered to be withheld from shipment in commerce by a “hot goods” injunction. An affirmative duty is

³The functions of the Secretary and the Administrator under the Act are delineated in 13 FR 2195, 12 FR 6971, and 15 FR 3290.

⁴H. Rept. No. 1453, 81st Cong. 1st sess., p. 31.