

## § 780.923

harvest workers do not include employees employed or to be employed in planting or cultivating the crop. Nor do they include employees employed or to be employed in operations subsequent to harvesting, even where such operations constitute "agriculture" within the definition in section 3(f) of the Act. "Harvesting" refers to the removal of fruits or vegetables from their growing position in the fields, and as explained in § 780.118 of this part, includes the operations customarily performed in connection with this severance of the crops from the soil (see *Vives v. Serralles*, 145 F. 2d 552), but does not extend to operations subsequent to and unconnected with the actual severance process or to operations performed off the farm. It may include moving the fruits or vegetables to concentration points on the farm, but would not include packingshed or other operations performed in preparation for market rather than as part of harvesting, such as ripening, cleaning, grading, sorting, drying, and storing. If the workers are employed or to be employed in "harvesting", it does not matter for purposes of the exemption whether a farmer or someone else employs them or does the harvesting. It is the character of their employment as "harvesting" and not the identity of their employer or the owner of the crop which determines whether their transportation to and from the farm will provide a basis for exemption of the transportation of employees.

### § 780.923 "Between the farm and any point within the same State."

The transportation of fruit or vegetable harvest workers is permitted "between the farm and any point within the same State". The exempt transportation of such harvest workers therefore includes their movement to and from the farm (see 107 Cong. Rec. (daily ed.) p. 4523). Such transportation must, however, be from or to points "within the same State" in which the farm is located. Crossing of State lines is not contemplated. Thus, the exemption would not apply to day-haul transportation of fruit or vegetable harvest workers between a town in one State and farms located in another State. Also, the intent to exempt "transportation of the harvest crew to and from the farm" (see 107 Cong. Rec. (daily ed.) p. 4523) within a single State would not justify exemption of the transportation of workers from one State to another to engage in harvest work in the latter State. The exemption does not apply to transportation of persons on any trip, or any portion of a trip, in which the point of origin or point of destination is in another State. Subject to these limitations, however, where employees are being transported for employment in harvesting they may be picked up in any place within the State, including other farms, packing or processing establishments, factories, transportation terminals, and other places. The broad term "any point" must be interpreted in the light of the purpose of the exemption to facilitate the harvesting of fruits or vegetables. Transportation from a farm to "any point" within the same State (such as a factory or processing plant) where some other purpose than harvesting is served is not exempt.

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### Subpart K—Employment of Homeworkers in Making Wreaths; Exemption From Minimum Wage, Overtime Compensation, and Child Labor Provisions Under Section 13(d)

#### INTRODUCTORY

#### § 780.1000 Scope and significance of interpretative bulletin.

Subpart A of this part 780 and this subpart K together constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(d) of the Fair Labor Standards Act of 1938, as amended. This section provides an exemption from the minimum wage, overtime pay, and child labor provisions of the Act for certain homeworkers employed in making wreaths from evergreens and in harvesting evergreens and other forest products for use in making wreaths. Attention is directed to the fact that a limited overtime exemption for employees employed in the decoration greens industry is provided under section 7(c) of the Act (see part 526 of this

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chapter). The section 7(c) exemption is not limited to homeworkers.

### § 780.1001 General explanatory statement.

Workers in rural areas sometimes engage, as a family unit, around the Christmas holidays, in gathering evergreens and making them into wreaths in their homes. Such workers, under well-settled interpretations by the Department of Labor and the courts, have been held to be employees of the firm which purchases the wreaths and furnishes the workers with wire used in making such wreaths.

#### REQUIREMENTS FOR EXEMPTION

### § 780.1002 Statutory requirements.

Section 13(d) of the Fair Labor Standards Act exempts from the minimum wage provisions of section 6, the overtime requirements of section 7 and the child labor restrictions of section 12:

Any homemaker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

### § 780.1003 What determines the application of the exemption.

The application of this exemption depends on the nature of the employee's work and not on the character of the employer's business. To determine whether an employee is exempt an examination should be made of the activities which that employee performs and the conditions under which he performs them. Some employees of the employer may be exempt and others may not.

### § 780.1004 General requirements.

The general requirements of the exemption are that:

- (a) The employee must be a homemaker;
- (b) The employee must be engaged in making wreaths as a homemaker;
- (c) The wreaths must be made principally of evergreens;
- (d) Any harvesting of the evergreens and other forest products by the

homeworkers must be for use in making the wreaths by homeworkers.

### § 780.1005 Homeworkers.

The exemption applies to "any homemaker." A homemaker within the meaning of the Act is a person who works for an employer in or about a home, apartment, tenement, or room in a residential establishment.

### § 780.1006 In or about a home.

Whether the work of an employee is being performed "in or about a home," so that he may be considered a homemaker, must be determined on the facts in the particular case. In general, however the phrase "in or about a home" includes any home, apartment, or other dwelling place and surrounding premises, such yards, garages, sheds or basements. A convent, orphanage or similar institution is considered a home.

### § 780.1007 Exemption is inapplicable if wreath-making is not in or about a home.

The section 13(d) exemption does not apply when the wreaths are made in or about a place which is not considered a "home". Careful consideration is required in many cases to determine whether work is being performed in or about a home. Thus, the circumstances under which an employee may engage in work in what ostensibly is a "home" may require the conclusion, on an examination of all the facts, that the work is not being performed in or about a home within the intent of the term and for purposes of section 13(d) of the Act.

### § 780.1008 Examples of places not considered homes.

The following are examples of workplaces which, on examination, have been considered not to be a "home":

- (a) Living quarters allocated to and regularly used solely for production purposes, where workers work regular schedules and are under constant supervision by the employer, are not considered to be a home.
- (b) While a convent, orphanage or similar institution is considered a home, an area in such place which is set aside for and used for sewing or