

### § 570.113

### 29 CFR Ch. V (7-1-14 Edition)

provision leads to the conclusion that Congress intend its application to be generally consistent with that of wage and hours coverage provisions. The application of the provision depends on the existence of two necessary elements: (1) The employment of “oppressive child labor”<sup>24</sup> by some employer and (2) the employment of such oppressive child labor in activities or enterprises which are in commerce or in the production of goods for commerce within the meaning of the Act.

[36 FR 25156, Dec. 29, 1971]

#### § 570.113 Employment “in commerce or in the production of goods for commerce”.

(a) The term “employ” is broadly defined in section 3(g) of the Act to include “to suffer or permit to work.” The Act expressly provides that the term “employer” includes “any person acting directly or indirectly in the interest of an employer in relation to an employee”. The nature of an employer-employee relationship is ordinarily to be determined not solely on the basis of the contractual relationship between the parties but also in the light of all the facts and circumstances. Moreover, the terms “employer” and “employ” as used in the Act are broader than the common-law concept of employment and must be interpreted broadly in the light of the mischief to be corrected. Thus, neither the technical relationship between the parties nor the fact that the minor is unsupervised or receives no compensation is controlling in determining whether an employer-employee relationship exists for purposes of section 12(c) of the Act. However, these are matters which should be considered along with all other facts and circumstances surrounding the relationship of the parties in arriving at such determination. The words “suffer or permit to work” include those who suffer by a failure to hinder and those who permit by acquiescence in addition to those who employ by oral or written contract. A typical illustration of employment of oppressive child labor by suffering or permitting an under-aged

minor to work is that of an employer who knows that his employee is utilizing the services of such a minor as a helper or substitute in performing his employer’s work. If the employer acquiesces in the practice or fails to exercise his power to hinder it, he is himself suffering or permitting the helper to work and is, therefore, employing him, within the meaning of the Act. Where employment does exist within the meaning of the Act, it must, of course, be in commerce or in the production of goods for commerce or in an enterprise engaged in commerce or in the production of goods for commerce in order for section 12(c) to be applicable.

(b) As previously indicated, the scope of coverage of section 12(c) of the Act is, in general, coextensive with that of the wage and hours provisions. The basis for this conclusion is provided by the similarity in the language used in the respective provisions and by statements appearing in the legislative history concerning the intended effect of the addition of section 12(c). Accordingly, it may be generally stated that employees considered to be within the scope of the phrases “in commerce or in the production of goods for commerce” for purposes of the wage and hours provisions are also included within the identical phrases used in section 12(c). To avoid needless repetition, reference is herein made to the full discussion of principles relating to the general coverage of the wage and hours provisions contained in parts 776 and 779 of this chapter. In this connection, however, it should be borne in mind that lack of coverage under the wage and hours provisions or under section 12(c) does not necessarily preclude the applicability of section 12(a) of the Act.<sup>26</sup>

[36 FR 25156, Dec. 29, 1971]

#### JOINT AND SEPARATE APPLICABILITY OF SECTIONS 12(a) AND 12(c)

#### § 570.114 General.

It should be noted that section 12(a) does not directly outlaw the employment of oppressive child labor. Instead, it prohibits the shipment or delivery

<sup>24</sup> “Oppressive child labor” is discussed in §§ 570.117 to 570.121, inclusive.

<sup>25</sup> [Reserved]

<sup>26</sup> See § 570.116