

§ 780.1002

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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 other productive work under supervision is not a home.
- (c) Where an employee performs work on wreaths in a home and also engages in work on the wreaths for the employer during that workweek in a factory, he is not exempt in that week, since some of his work is not performed in a home.

§ 780.1009 Wreaths.

The only product which may be produced under the section 13(d) exemption by a homemaker is a wreath having no less than the specified evergreen content. The making of a product other than a wreath is nonexempt even