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the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees: *Provided*, That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective bargaining agreement applicable to the particular employee: *Provided further*, That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measure of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee''. Although there is some incidental discussion in this part of this definition and its impact, a fuller discussion of its meaning and the regulations pertaining thereto are set forth in part 531 of this chapter.

§ 783.17 "American vessel".

Section 3(p) of the Act, added by the 1961 Amendments, defines ''American vessel'' to include ''any vessel which is documented or numbered under the laws of the United States.'' This definition and its effect with respect to the application of the Act to employment of individuals as seamen are discussed in subsequent sections of this part.

APPLICATION IN GENERAL OF THE ACT'S PROVISIONS

§ 783.18 Commerce activities of employees.

Prior to the 1961 Amendments, the Fair Labor Standards Act applied to all employees, not specifically exempted, who are engaged (a) in interstate or foreign commerce or (b) in the production of goods for such commerce, which is defined to include any closely related process or occupation directly, essential to such production (29 U.S.C. 206(a), 207(a); and see §§ 783.12 to 783.15 for definitions governing the scope of this coverage). The Act as amended in 1961 continues this coverage. In general, employees of businesses concerned with the transportation of goods or persons on navigable waters are engaged in interstate or foreign commerce, or in the production of goods for such commerce, as defined in the Act, and are subject to the Act's provisions except as otherwise provided in sections 13(a)(14) and 13(b)(6) or other express exemptions. A detailed discussion of the activities in commerce or in the production of goods for commerce which will bring an employee under the Act is contained in part 776 of this chapter, dealing with general coverage.

§ 783.19 Commerce activities of enterprises in which employee is employed.

Under amendments to the Fair Labor Standards Act effective September 3, 1961, employees not covered by reason of their personal engagement in interstate commerce activites, as explained in § 783.18, are nevertheless brought within the coverage of the Act if they are employed in an enterprise which is defined in section 3(s) of the Act as an enterprise engaged in commerce or in the production of goods for commerce, or by an establishment described in section 3(s)(3) of the Act (see § 783.11). Such employees, if not exempt from the minimum wage and overtime pay requirements under section 13(a)(14) or exempt from the overtime pay requirements under section 13(b)(6), will have to be paid in accordance with those monetary standards of the Act unless expressly exempt under some other provision. This would generally be true of employees employed in enterprises and by establishments engaged in a business concerned with transportation of goods or persons by vessels, where the enterprise has an annual gross sales volume of $1,000,000 or more. Enterprise coverage is more fully discussed in part 776 of this chapter, dealing with general coverage.

§ 783.20 Exemptions from the Act's provisions.

The Act provides a number of specific exemptions from the general requirements previously described. Some are

exemptions from the overtime provisions only. Others are from the child labor provisions only. Several are exemptions from both the minimum wage and the overtime requirements of the Act. Finally, there are some exemptions from all three—minimum wage, overtime pay, and child labor requirements. An examination of the terminology in which the exemptions from the general coverage of the Fair Labor Standards Act are stated discloses language patterns which reflect congressional intent. Thus, Congress specified in varying degree the criteria for application of each of the exemptions and in a number of instances differentiated as to whether employees are to be exempt because they are employed by a particular kind of employer, employed in a particular type of establishment, employed in a particular industry, employed in a particular capacity or occupation, or engaged in a specified operation. (See 29 U.S.C. 203(d); 207 (b), (c), (h); 213 (a), (b), (c), (d). And see *Addison* v. *Holly Hill*, 322 U.S. 607; *Walling* v. *Haden*, 153 F. 2d 196, certiorari denied 328 U.S. 866; *Mitchell* v. *Stinson*, 217 F. 2d 210.) In general, there are no exemptions from the child labor requirements that apply in enterprises or establishments engaged in transportation or shipping (see part 570, subpart G of this chapter). Such enterprises or establishments will, however, be concerned with the exemption from overtime pay in section 13(b)(6) of the Act for employees employed as seamen and the exemption from the mimimum wage and overtime pay requirements provided by section 13(a)(14) for employees so employed on vessels other than American vessels. These exemptions, which are subject to the general rules stated in § 783.21, are discussed at length in this part.

§ 783.21 Guiding principles for applying coverage and exemption provisions.

It is clear that Congress intended the Fair Labor Standards Act to be broad in its scope (*Helena Glendale Ferry Co.* v. *Walling*, 132 F. 2d 616). ''Breadth of coverage is vital to its mission'' (*Powell* v. *U.S. Cartridge Co.*, 339 U.S. 497). An employer who claims an exemption under the Act has the burden of showing that it applies (*Walling* v. *General Industries Co.*, 330 U.S. 545; *Mitchell* v. *Kentucky Finance Co.*, 359 U.S. 290; *Tobin* v. *Blue Channel Corp.* 198 F. 2d 245, approved in *Mitchell* v. *Myrtle Grove Packing Co.*, 350 U.S. 891; *Fleming* v. *Hawkeye Pearl Button Co.*, 113 F. 2d 52). Conditions specified in the language of the Act are ''explicit prerequisites to exemption'' (*Arnold* v. *Kanowsky*, 361 U.S. 388; and see *Walling* v. *Haden*, 153 F. 2d 196). In their application, the purpose of the exemption as shown in its legislative history as well as its language should be given effect. However, ''the details with which the exemptions in this Act have been made preclude their enlargement by implication'' and ''no matter how broad the exemption, it is meant to apply only to'' the specified activities (*Addison* v. *Holly Hill*, 322 U.S. 607; *Maneja* v. *Waialua*, 349 U.S. 254). Exemptions provided in the Act ''are to be narrowly construed against the employer seeking to assert them'' and their application limited to those who come ''plainly and unmistakably within their terms and spirits.'' This construction of the exemptions is necessary to carry out the broad objectives for which the Act was passed (*Phillips* v. *Walling*, 324 U.S. 490; *Mitchell* v. *Kentucky Finance Co.*, supra; *Arnold* v. *Kanowsky*, supra; *Helena Glendale Ferry Co.* v. *Walling*, supra; *Mitchell* v. *Stinson*, 217 F. 2d 210; *Flemming* v. *Hawkeye Pearl Button Co.*, 113 F. 2d 52; *Walling* v. *Bay State Dredging & Contracting Co.*, 149 F. 2d 346, certiorari denied 326 U.S. 760; *Anderson* v. *Manhattan Lighterage Corp.*, 148 F. 2d 971, certiorari denied 326 U.S. 722; *Sternberg Dredging Co.* v. *Walling*, 158 F. 2d 678).

§ 783.22 Pay standards for employees subject to "old" coverage of the Act.

The 1961 amendments did not change the tests described in § 783.18 by which coverage based on the employee's individual activities is determined. Any employee whose employment satisfies these tests and would not have come within some exemption (such as section 13(a)(14)) in the Act prior to the 1961 amendments is subject to the ''old'' provisions of the law and entitled to a minimum wage of at least $1.15 an hour beginning September 3,