

§ 779.103

EMPLOYEES ENGAGED IN COMMERCE OR IN THE PRODUCTION OF GOODS FOR COMMERCE

§ 779.103 Employees “engaged in commerce.”

Employees are “engaged in commerce” within the meaning of the Act when they are performing work involving or related to the movement of persons or things (whether tangibles or intangibles, and including information and intelligence) among the several States or between any State and any place outside thereof. (The statutory definition of commerce is contained in section 3(b) of the Act and is set forth in § 779.12.) The courts have made it clear that this includes every employee employed in the channels of such commerce or in activities so closely related to this commerce, as to be considered a part of it as a practical matter. (Court cases are cited in the discussion of this term in §§ 776.9–776.13 of this chapter). Typically, but not exclusively, employees engaged in interstate or foreign commerce include employees in distributing industries, such as wholesaling or retailing, who sell, handle or otherwise work on goods moving in interstate commerce as well as workers who order, receive, pack, ship, or keep records of such goods; clerical and other workers who regularly use the mails, telephone or telegraph for interstate communication; and employees who regularly travel across State lines while working.

§ 779.104 Employees “engaged in the production of goods for commerce.”

The activities constituting “production” within the meaning of the phrase “engaged in * * * the production of goods for commerce” are defined in section 3(j) of the Act. (The statutory definition is set forth in § 779.13.) The handling or otherwise working on goods intended for shipment out of the State, directly or indirectly, in engagement in the “production” of goods for commerce. Thus, employees in retail stores who sell, pack, or otherwise work on goods which are to be shipped or delivered outside of the State are engaged in the production of goods for commerce. Typically, but not exclusively, employees engaged in the pro-

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duction of goods for interstate or foreign commerce, include those who work in manufacturing, processing and distributing establishments, including wholesale or retail establishments, that produce goods for interstate or foreign commerce. This includes everyone, including office, management, sales and shipping personnel, and maintenance, custodial and protective employees, whether they are employed by the producer or an intermediary. Employees may be covered even if their employer does not ship his goods directly in such commerce. The goods may leave the State through another firm. The workers may produce goods which become a part or ingredient of goods shipped in interstate or foreign commerce by another firm. Also covered are workers who are engaged in a closely related process or occupation directly essential to such production. (See § 779.105.)

§ 779.105 Employees engaged in activities “closely related” and “directly essential” to the production of goods for commerce.

Some employees are covered because their work, although not actually a part of such production, is “closely related” and “directly essential” to it. This group of employees includes bookkeepers, stenographers, clerks, accountants and auditors and other office and white collar workers, and employees doing payroll, timekeeping and time study work for the producer of goods; employees in the personnel, labor relations, advertising, promotion, and public relations activities of the producing enterprise; work instructors for the producer; employees maintaining, servicing, repairing or improving the buildings, machinery, equipment, vehicles or other facilities used in the production of goods for commerce, and such custodial and protective employees as watchmen, guards, firemen, patrolmen, caretakers, stockroom workers, and warehousemen; and transportation workers bringing supplies, materials, or equipment to the producer’s premises, removing waste materials therefrom, or transporting materials or other goods, or performing such other transportation activities, as the needs