§ 779.23 Establishment.

As used in the Act, the term establishment, which is not specially defined therein, refers to a “distinct physical place of business” rather than to “an entire business or enterprise” which may include several separate places of business. This is consistent with the meaning of the term as it is normally used in business and in government, is judicially settled, and has been recognized in the Congress in the course of enactment of amendatory legislation (Phillips v. Walling, 324 U.S. 490; Mitchell v. Bekins Van & Storage Co., 352 U.S. 1027; 95 Cong. Rec. 12505, 12579, 14877; H. Rept. No. 1453, 81st Cong., 1st Sess., p. 25). As appears more fully elsewhere in this part, this is the meaning of the term as used in sections 3(r), 3(s), 6(d), 7(i), 13(a), 13(b), and 14 of the Act.

§ 779.24 Retail or service establishment.

In the 1949 amendments to the Act, the term “retail or service establishment”, which was not previously defined in the law, was given a special definition for purposes of the Act. The legislative history of the 1961 and the 1966 amendments to the Act, which use the same term in a number of provisions relating to coverage and exemptions, indicates that no different meaning was intended by the term “retail or service establishment” as used in the new provisions from that already established by the Act’s definition. On the contrary, the existing definition was reenacted in section 13(a)(2) of the Act as amended in 1961 and 1966 as follows: “A ‘retail or service establishment’ shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry”. The application of this definition, which has had much judicial construction since its original enactment, is considered at length in subpart D of this part. As is apparent from the quoted language, not every establishment which engages in retail selling of goods or services will constitute a “retail or service establishment” within the meaning of the Act.

29 CFR Ch. V (7–1–10 Edition)