

§ 780.317

(e) If an employer claims this exemption, it is the employer's responsibility to obtain a statement from the employee showing the number of weeks he was employed in agriculture during the preceding calendar year. This requirement is contained in the recordkeeping regulations in § 516.33 (d) of this chapter.

§ 780.317 Man-day exclusion.

Section 3(e)(2) specifically excludes from the employer's man-day total (as defined in section 3(u)) employees who qualify for exemption under section 13(a)(6)(C). (See § 780.301.) This man-day count is a basic factor in the application of the section 13(a)(6)(A) exemption. (See § 780.302 *et seq.*)

§ 780.318 Exemption for nonlocal minors.

(a) Section 13(a)(6)(D) of the 1966 Amendments to the Fair Labor Standards Act exempts from the minimum wage and overtime provisions "any employee employed in agriculture * * * if such employee (other than an employee described in clause (C) of this subsection): (1) Is 16 years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (2) is employed on the same farm as his parent or persons standing in the place of his parent, and (3) is paid at the same piece rate as employees over age 16 are paid on the same farm."

(b) It is clear from the legislative history of the amendments that the exemption was intended to apply, where the other specific tests are met, only to minors 16 years of age or under who are not "local" in the sense that they are away from their permanent home when employed in agriculture. Specifically the exemption was intended to apply in the case of the children of migrants who typically accompany their parents in harvesting and other agricultural work. (S. Rept. No. 1487, 89th Cong., second sess., to accompany H.R. 13712, pp. 9 and 10)

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§ 780.319 Basic conditions of exemption.

(a) Section 13(a)(6)(D) applies to an employee engaged in agriculture who meets all of the following tests:

(1) Is not a local hand harvest laborer.

(2) Is 16 years of age or under,

(3) Is employed as a hand harvest laborer.

(4) Is paid on a piece rate basis,

(5) Is employed in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment,

(6) Is employed on the same farm as his parent or person standing in the place of his parent, and

(7) Is paid at the same piece rate as employees over age 16 are paid on the same farms.

(b) Some of these requirements which are common to both sections 13(a)(6)(C) and 13(a)(6)(D) have already been discussed in connection with section 13(a)(6)(C) and need not be repeated. They are found in §§ 780.311 (employed in agriculture), 780.312 (hand harvest laborer), 780.313 (piece rate basis), and 780.314 (operations customarily * * * paid on a piece rate basis). The other requirements are discussed in the following sections.

§ 780.320 Nonlocal minors.

The exemption applies only to migrant or other than local hand harvest workers 16 years of age or under who do come within the scope of section 13(a)(6)(C) (application to all local hand harvest laborers who commute daily from their permanent residences). (See § 780.315.) A local youth under the prescribed age who commutes daily from his permanent residence to the farm to perform work is not exempt under section 13(a)(6)(D). The exemption may, however, be available for the specified minors who work for short periods of several days or weeks without returning daily to their homes on farms beyond commuting distances from their permanent homes.

§ 780.321 Minors 16 years of age or under.

Section 13(a)(6)(D) by its very terms is available only to employees 16 years

of age or under. Accordingly, even though all the other tests of the exemption are met, the exemption is inapplicable in the case of an employee over 16 years of age and the employer must pay to such an employee the applicable statutory minimum wage unless his operations come within the reach of some other exemption, such as section 13(a)(6)(A). Furthermore, although section 13(a)(6)(D) provides a minimum wage and overtime exemption for minors 16 years of age or under, the employer must nevertheless comply with the child labor provisions of the Act prohibiting the employment of minors in agriculture except under certain conditions and circumstances. These provisions are discussed in part 1500, subpart G of this title.

§ 780.322 Is employed on the same farm as his parent or persons standing in the place of his parent.

(a) The words "employed on the same farm" are accorded their natural meaning with the usual caution, however, that as in the case of all other exemptions, the exemptive language is to be construed narrowly. (See § 780.2.)

(b) Individuals who are considered as "his parent or persons standing in place of his parent" include natural parents, or any other person where the relationship between that person and a child is such that the person may be said to stand in place of a parent. For example, one who takes a child into his home and treats it as a member of his own family, educating and supporting the child as if it were his own, is generally said to stand to the child in place of a parent.

§ 780.323 Exemption for range production of livestock.

Section 13(a)(6)(E) which was added to the Act by the Fair Labor Standards Amendments of 1966 provides an exemption from the minimum wage and overtime requirements of the Act for any employee "employed in agriculture" if he is "principally engaged in the range production of livestock." It is apparent from the language of section 13(a)(6)(E) that the application of this exemption depends on the type of work performed by the individual employee for whom exemption is sought

and on where the work is done. A determination of whether an employee is exempt therefore requires an examination of that employee's duties and where they are performed. Some employees of the employer may be exempt while others may not.

§ 780.324 Requirements for the exemption to apply.

(a) All the following conditions must be met in order for the exemption to apply to an employee:

- (1) He must be "engaged in agriculture";
- (2) Be "principally engaged";
- (3) On the "range", and
- (4) In the "production of livestock."

(b) Since the raising of livestock is included in the definition of agriculture under section 3(f) of the Act (see §§ 780.119-780.121 of subpart B of this part), the range production of livestock would normally be deemed agriculture work, and, consequently, an employee, during this time he is engaged in such activities, would meet the basic requirement of the exemption that he be "employed in agriculture."

The following sections discuss the meaning and application of the other requirements.

§ 780.325 Principally engaged.

(a) To determine whether an employee is "principally engaged" in the range production of livestock, one must consider the nature of his duties and responsibilities. To qualify for this exemption the primary duty and responsibility of a range employee must be to take care of the animals actively or to stand by in readiness for that purpose. A determination of whether an employee has range production of livestock as his primary duty must be based on all the facts in a particular case. The amount of time spent in the performance of the range production duties is a useful guide in determining whether this is the primary duty of the employee. In the ordinary case it will be considered that the primary duty means the major part, or over 50 percent, of the employee's time.

(b) Under this principle, an employee who spends more than 50 percent of his time during the year on the range in