(d) The man-days of labor of employees principally engaged in the range production of livestock, even though the employees are exempt from the wage and hour requirements of the Act, are included in the employer's man-day count for purposes of application of section 13(a)(6)(A). Thus, if a cattle rancher in a particular calendar quarter uses 200 man-days of such range production labor and 400 man-days of agricultural labor performed by individuals not so engaged, he is required to pay the minimum wage to the latter employees in the following year.

§ 780.330 Sharecroppers and tenant farmers.

(a) The test of coverage for sharecroppers and tenant farmers is the same as that applied under the Act to determine whether any other person is an employee or not. Certain so-called sharecroppers or tenants whose work activities are closely guided by the landowner or his agent are covered. Those individuals called sharecroppers and tenants whose work is closely directed and who have no actual discretion in controlling farm operations are in fact employees by another name. True independent-contractor sharecroppers or tenant farmers who actually control their farm operations are not employees, but if they employ other workers they may be responsible as employers under the Act.

(b) In determining whether such individuals are employees or independent contractors, the criteria laid down by the courts in interpreting the Act’s definitions of employment, such as those enunciated by the Supreme Court in Rutherford Food Corporation v. McComb, are utilized. This case, as well as others, made it clear that the answer to the question of whether an individual is an employee or an independent contractor under the definitions in this Act lies in the relationship in its entirety, and is not determined by common law concepts. It does not depend upon isolated factors but on the “whole activity.” An employee is one who as a matter of economic reality follows the usual path of an employee. Each case must be decided on the basis of all facts and circumstances, and as an aid in the assessment, one considers such factors as the following:

(1) The extent to which the services rendered are an integral part of the principal’s business;
(2) The permanency of the relationship;
(3) The opportunities for profit or loss;
(4) The initiative, judgment, or foresight exercised by the one who performs the services;
(5) The amount of investment; and
(6) The degree of control which the principal has in the situation.

(c) Where a tenant or sharecropper is found to be an employee, he and any members of his family who work with him on the crop are also to be included in the 500 man-day count of the owner or operator of the farm. Thus, where a sharecropper is an employee and his wife and children help in chopping cotton, all the family members are employees of the farm owner or operator and all their man-days of work are counted.

(d) On the other hand, a sharecropper or tenant who qualifies as a bona fide independent contractor is considered the same as any other employer, and only the man-days of agricultural labor performed by employees of such a sharecropper or tenant are counted toward the man-days used by him. If he does not meet the 500 man-day test, he is not required to pay his employees the minimum wage even though those employees are entitled to the minimum wage when working for a separate employer who met the man-day test.

§ 780.331 Crew leaders and labor contractors.

(a) Whether a crew leader or a labor contractor is the employer of the workers he supplies is a question of fact. The tests here are the same as those used to determine whether a sharecropper or tenant is an independent contractor. A crew leader who merely assembles a crew and brings them to the farm to be supervised and paid directly by the farmer, and who does the same work and receives the same pay as the crewmembers, is an employee of the farmer, and both he and his crew
§ 780.332  Exchange of labor between farmers.

(a) Occasionally a farmer may help his neighbor with the harvest of his crop. For instance, Farmer B helps his neighbor Farmer A harvest his wheat. In return Farmer A helps Farmer B with the harvest at his farm.

(b) In a case where neighboring farmers exchange their own work under an arrangement where the work of one farmer is repaid by the labor of the other farmer and there is no monetary compensation for these services paid or contemplated, the Department of Labor would not assert that either farmer is an employee of the other.

(c) In addition, there may be instances where employees of a farmer also work for neighboring farmers during harvest time. For example, employees of Farmer A may help Farmer B with his harvest, and later, Farmer B’s employees may help Farmer A. These employees would be included in the man-day count of the farmer for whom the work is performed on the day in question. Since the Act defines man-day to mean any day during which an employee performs any agricultural labor for not less than 1 hour, there may be days on which these employees work for both Farmer A and Farmer B.

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