

Wage and Hour Division, Labor

§ 784.12

§ 784.8 “Employer,” “employee,” and “employ.”

The Act’s major provisions impose certain requirements and prohibitions on every “employer” subject to their terms. The employment by an “employer” of an “employee” is, to the extent specified in the Act, made subject to minimum wage and overtime pay requirements and to prohibitions against the employment of oppressive child labor. The Act provides its own definitions of “employer,” “employee” and “employ,” under which “economic reality” rather than “technical concepts” determines whether there is employment subject to its terms (*Goldberg v. Whitaker House Cooperative*, 366 U.S. 28; *United States v. Silk*, 331 U.S. 704; *Rutherford Food Corp. v. McComb*, 331 U.S. 722). An “employer,” as defined in section 3(d) of the Act, “includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.” An “employee,” as defined in section 3(e) of the Act, “includes any individual employed by an employer,” and “employ,” as used in the Act, is defined in section 3(g) to include “to suffer or permit to work.” It should be noted, as explained in part 791 of this chapter, dealing with joint employment that in appropriate circumstances two or more employers may be jointly responsible for compliance with the statutory requirements applicable to employment of a particular employee. It should also be noted that “employer,” “enterprise,” and “establishment” are not synonymous terms, as used in the Act. An employer may have an enterprise with more than one establishment, or he may have more than one enterprise in which he employs employees within the meaning of the Act. Also, there may be different employers who employ employees in a particular establishment or enterprise.

§ 784.9 “Person.”

As used in the Act (including the definition of “enterprise” set forth below

in § 784.10), “person” is defined as meaning “an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons” (Act, section 3(a)).

§ 784.10 “Enterprise.”

The term “enterprise” which may, in some situations, be pertinent in determining coverage of this Act to employees employed by employers engaged in the procurement, processing, or distribution of aquatic products, is defined in section 3(r) of the Act, section 3(r) states:

Enterprise means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor * * *.

The scope and application of this definition is discussed in part 776 of this chapter.

§ 784.11 “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., first session, p. 25). This is the meaning of the term as used in sections 3(r) and 3(s) of the Act.

§ 784.12 “Commerce.”

“Commerce” as used in the Act includes interstate and foreign commerce. It is defined in section 3(b) of the Act to mean “trade, commerce,