this chapter. Section 4 of the Portal-to-Portal Act does not affect the computation of hours worked within the ''workday''. ''Workday'' in general, means the period between ''the time on any particular workday at which such employee commences (his) principal activity or activities'' and ''the time on any particular workday at which he ceases such principal activity or activities.'' The ''workday'' may thus be longer than the employee's scheduled shift, hours, tour of duty, or time on the production line. Also, its duration may vary from day to day depending upon when the employee commences or ceases his ''principal'' activities. With respect to time spent in any ''preliminary'' or ''postliminary'' activity compensable by contract, custom, or practice, the Portal-to-Portal Act requires that such time must also be counted for purposes of the Fair Labor Standards Act. There are, however, limitations on this requirement. The ''preliminary'' or ''postliminary'' activity in question must be engaged in during the portion of the day with respect to which it is made compensable by the contract, custom, or practice. Also, only the amount of time allowed by the contract or under the custom or practice is required to be counted. If, for example, the time allowed is 15 minutes but the activity takes 25 minutes, the time to be added to other working time would be limited to 15 minutes. (*Galvin* v. *National Biscuit Co.*, 82 F. Supp. 535 (S.D.N.Y. 1949) appeal dismissed, 177 F. 2d 963 (C.A. 2, 1949))

(b) *Section 3(o) of the Fair Labor Standards Act.* Section 3(o) gives statutory effect, as explained in §785.26, to the exclusion from measured working time of certain clothes-changing and washing time at the beginning or the end of the workday by the parties to collective bargaining agreements.

[26 FR 190, Jan. 11, 1961, as amended at 30 FR 9912, Aug. 10, 1965]

Subpart C—Application of Principles

§785.10 Scope of subpart.

This subpart applies the principles to the problems which arise frequently.

EMPLOYEES ''SUFFERED OR PERMITTED'' TO WORK

§785.11 General.

Work not requested but suffered or permitted is work time. For example, an employee may voluntarily continue to work at the end of the shift. He may be a pieceworker, he may desire to finish an assigned task or he may wish to correct errors, paste work tickets, prepare time reports or other records. The reason is immaterial. The employer knows or has reason to believe that he is continuing to work and the time is working time. (*Handler* v. *Thrasher*, 191, F. 2d 120 (C.A. 10, 1951); *Republican Publishing Co.* v. *American Newspaper Guild*, 172 F. 2d 943 (C.A. 1, 1949; *Kappler* v. *Republic Pictures Corp.*, 59 F. Supp. 112 (S.D. Iowa 1945), aff'd 151 F. 2d 543 (C.A. 8, 1945); 327 U.S. 757 (1946); *Hogue* v. *National Automotive Parts Ass'n.* 87 F. Supp. 816 (E.D. Mich. 1949); *Barker* v. *Georgia Power & Light Co.*, 2 W.H. Cases 486; 5 CCH Labor Cases, para. 61,095 (M.D. Ga. 1942); *Steger* v. *Beard & Stone Electric Co., Inc.*, 1 W.H. Cases 593; 4 Labor Cases 60,643 (N.D. Texas, 1941))

§785.12 Work performed away from the premises or job site.

The rule is also applicable to work performed away from the premises or the job site, or even at home. If the employer knows or has reason to believe that the work is being performed, he must count the time as hours worked.

§785.13 Duty of management.

In all such cases it is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed. It cannot sit back and accept the benefits without compensating for them. The mere promulgation of a rule against such work is not enough. Management has the power to enforce the rule and must make every effort to do so.

WAITING TIME

§785.14 General.

Whether waiting time is time worked under the Act depends upon particular circumstances. The determination involves ''scrutiny and construction of

the agreements between particular parties, appraisal of their practical construction of the working agreement by conduct, consideration of the nature of the service, and its relation to the waiting time, and all of the circumstances. Facts may show that the employee was engaged to wait or they may show that he waited to be engaged.'' (*Skidmore* v. *Swift*, 323 U.S. 134 (1944)) Such questions ''must be determined in accordance with common sense and the general concept of work or employment.'' (*Central Mo. Tel. Co.* v. *Conwell*, 170 F. 2d 641 (C.A. 8, 1948))

§ 785.15 On duty.

A stenographer who reads a book while waiting for dictation, a messenger who works a crossword puzzle while awaiting assignments, fireman who plays checkers while waiting for alarms and a factory worker who talks to his fellow employees while waiting for machinery to be repaired are all working during their periods of inactivity. The rule also applies to employees who work away from the plant. For example, a repair man is working while he waits for his employer's customer to get the premises in readiness. The time is worktime even though the employee is allowed to leave the premises or the job site during such periods of inactivity. The periods during which these occur are unpredictable. They are usually of short duration. In either event the employee is unable to use the time effectively for his own purposes. It belongs to and is controlled by the employer. In all of these cases waiting is an integral part of the job. The employee is engaged to wait. (See: *Skidmore* v. *Swift*, 323 U.S. 134, 137 (1944); *Wright* v. *Carrigg*, 275 F. 2d 448, 14 W.H. Cases (C.A. 4, 1960); *Mitchell* v. *Wigger*, 39 Labor Cases, para. 66,278, 14 W.H. Cases 534 (D.N.M. 1960); *Mitchell* v. *Nicholson*, 179 F. Supp, 292,14 W.H. Cases 487 (W.D.N.C. 1959))

§ 785.16 Off duty.

(a) *General.* Periods during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked. He is not completely relieved from duty and cannot use the time effectively for his own purposes unless he is definitely told in advance that he may leave the job and that he will not have to commence work until a definitely specified hour has arrived. Whether the time is long enough to enable him to use the time effectively for his own purposes depends upon all of the facts and circumstances of the case.

(b) *Truck drivers; specific examples.* A truck driver who has to wait at or near the job site for goods to be loaded is working during the loading period. If the driver reaches his destination and while awaiting the return trip is required to take care of his employer's property, he is also working while waiting. In both cases the employee is engaged to wait. Waiting is an integral part of the job. On the other hand, for example, if the truck driver is sent from Washingtion, DC to New York City, leaving at 6 a.m. and arriving at 12 noon, and is completely and specifically relieved from all duty until 6 p.m. when he again goes on duty for the return trip the idle time is not working time. He is waiting to be engaged. (*Skidmore* v. *Swift*, 323 U.S. 134, 137 (1944); *Walling* v. *Dunbar Transfer & Storage*, 3 W.H. Cases 284; 7 Labor Cases para. 61,565 (W.D. Tenn. 1943); *Gifford* v. *Chapman*, 6 W.H. Cases 806; 12 Labor Cases para. 63,661 (W.D. Okla., 1947); *Thompson* v. *Daugherty*, 40 Supp. 279 (D. Md. 1941))

§ 785.17 On-call time.

An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while ''on call''. An employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call. (*Armour & Co.* v. *Wantock*, 323 U.S. 126 (1944); *Handler* v. *Thrasher*, 191 F. 2d 120 (C.A. 10, 1951); *Walling* v. *Bank of Waynesboro, Georgia*, 61 F. Supp. 384 (S.D. Ga. 1945))