

## Wage and Hour Division, Labor

## § 793.18

The Senate Report states that, for purposes of this exemption, employees who are primarily employed in the named occupation "may engage in related activities, including the sale of broadcasting time for the broadcasting company by which they are employed, as an incident to their principal occupation", (S. Rept. 145, 87th Cong., 1st sess., p. 37). Time spent in such duties will not be considered to defeat the exemption if the employee is primarily employed in the named occupations and if the other requirements of the exemption are met.

### § 793.13 Limitation on related and incidental work.

The related work which an employee may perform is clearly limited in nature and extent by a number of requirements. One limitation is that the work must be an incident to the employee's primary occupation. The work therefore may not predominate over his primary job. He is not "employed as" an announcer, news editor, or chief engineer if his dominant employment is in work outside such occupations (see *Walling v. Haden*, 153 F. 2d 196, cert. denied 328 U.S. 866). For instance, an announcer who spends 40 hours of his 48 hour workweek in selling broadcasting time would not be considered to be "incidentally" engaged in such selling. Selling would in such circumstances be his primary occupation. His duties as an announcer must constitute his primary job. Another requirement is that the work of the employees must be performed "for the broadcasting company by which they are employed \* \* \*" (see S. Rept. cited in § 793.12). Sale of broadcasting time for a company which does not employ the employee as an announcer, news editor, or chief engineer, is not exempt work. Work which is not performed for the station by which the employee is employed, is not intended to be exempt. For a discussion of the effect on the exemption of nonexempt work see §§ 793.19 to 793.21.

### § 793.14 Employed by.

The application of the exemption is limited to employees "employed by" a radio or television station. The question whether a worker is employed "by" a radio or television station de-

pends on the particular facts. (See *Rutherford Food Corporation v. McComb*, 331 U.S. 722; *U.S. v. Silk*, 331 U.S. 704.) In general, however, an employee is so employed where he is hired by the radio or television station, engages in its work, is paid by the radio or television station and is under its supervision and control. Employees of independent contractors and of others who work for a radio or television station but who are not "employed by" such station are not exempt under this exemption even if they engage in the named occupation. (*Mitchell v. Kroger*, 248, F. 2d 935.)

### § 793.15 Duties away from the station.

An employee who is "employed by" a radio or television station in one or more of the named occupations may perform his work at the station or away from the station so long as his activities meet the requirements for exemption.

### § 793.16 "Radio or television station."

The employee must be employed by a "radio or television station." A radio or television station is one which is designated and licensed as such by the Federal Communications Commission.

### § 793.17 "Major studio."

The exemption further depends on whether "the major studio" of the radio or television station which employs the employee is in a city or town as defined in section 13(b)(9). The location of secondary studios of the radio or television station is immaterial. It is the location of the "major" studio that determines the qualification of the employer for the exemption. A major studio for purposes of the exemption is the main studio of the radio or television station as designated on the station's license by the Federal Communications Commission. It is this major studio which must be located in the city or town as defined in section 13(b)(9) of the Act.

### § 793.18 Location of "major studio."

Section (b)(9) specifies that the "major studio" must be located "(A) in a city or town of one hundred thousand population or less according to the latest available decennial census figures