§ 779.308 Employed within scope of exempt business.

In order to meet the requirement of actual employment “by” the establishment, an employee, whether performing his duties inside or outside the establishment, must be employed by his employer in the work of the exempt establishment itself in activities within the scope of its exempt business. (See Davis v. Goodman Lumber Co., 133 F. 2d 52 (CA–4) holding section 13(a)(2) exemption inapplicable to employees working in manufacturing phase of employer’s retail establishment); Wessling v. Carroll Gas Co., 266 F. Supp. 795 (N.D. Iowa); Oliveira v. Basteiro, 18 WH Cases 668 (S.D. Texas). See also, Northwest Airlines v. Jackson, 185 F. 2d 74 (CA–8); Walling v. Connecticut Co., 154 F. 2d 522 (CA–2) certiorari denied, 329 U.S. 667; and Wabash Radio Corp. v. Walling, 162 F. 2d 391 (CA–6).)
establishments clearly cannot qualify as exempt establishments. (A. H. Phil-
lips, Inc. v. Walling, 324 U.S. 490; Mitch-
ell v. C & P Stores, 286 F. 2d 109 (CA–5).) The employees working there are not
“employed by” any single exempt es-
tablishment of the business; they are,
rather, “employed by” an organization
of a number of such establishments.
Their status obviously differs from
that of employees of an exempt retail
or service establishment, working in a
warehouse operated by and servicing
such establishment exclusively, who
are exempt as employees “employed
by” the exempt establishment regard-
less of whether or not the warehouse
operation is conducted in the same
building as the selling or servicing ac-
tivities.

§ 779.311 Employees working in more
than one establishment of same em-
ployer.

(a) An employee who is employed by
an establishment which qualifies as an
exempt establishment under section
13(a)(2) or (4) is exempt from the min-
imum wage and overtime requirements
of the Act even though his employer
also operates one or more establish-
ments which are not exempt. On the
other hand, it may be stated as a gen-
eral rule that if such an employer em-
ploys an employee in the work of both
exempt and nonexempt establishments
during the same workweek, the em-
ployee is not “employed by” an exempt
establishment during such workweek.
It is recognized, however, that employ-
ees performing an insignificant amount
of such incidental work or performing
work sporadically for the benefit of an-
other establishment of their employer
nevertheless, are “employed by” their
employer’s retail establishment. For
example, there are situations where an
employee of an employer in order to
discharge adequately the requirements
of his job for the exempt establishment
by which he is employed incidentally
or sporadically may be called upon to
perform some work for the benefit of
another establishment. For example,
an elevator operator employed by a re-
tail store, in performance of his regular
duties for the store incidentally may
carry personnel who have a central of-

"Retail or service establish-
ment", defined in section 13(a)(2).

The 1949 amendments to the Act de-
defined the term “retail or service estab-
lishment” in section 13(a)(2). That de-

§ 779.312 “Retail or service establish-
ment” shall mean an establishment 75 per centum of
whose annual dollar volume of sales of goods
or services (or of both) is not for resale and
is recognized as retail sales or services in the
particular industry.

It is clear from the legislative history of the 1961 amendments to the Act that

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