conceptions." The Court has specifically rejected the technical "new construction" concept, as a reliable test for determining coverage under this Act.2

So far as construction work specifically is concerned, the courts have cast the relevant tests for determining the scope of "in commerce" coverage in substantially similar language as they have used in construing the "production" phase of coverage. Thus the Act applies to construction work which is so intimately related to the functioning of interstate commerce as to be, in practical effect, a part of it, as well as to construction work which has a close and immediate tie with the scope of "in commerce" coverage in the relevant tests for determining the Act's application.2

(c) Production of goods for commerce. The "production" phase of coverage includes "any closely related process or occupation directly essential" to production of goods for commerce. An employee need not be engaged in activities indispensable to production in order to be covered. Conversely, even indispensable or essential activities, in the sense of being included in the long line of causation which ultimately results in production of finished goods, may not be covered. The work must be both closely related and directly essential to the covered production.5

(d) State and national authority. Consideration must also be given to the relationship between state and national authority because Congress intended "to leave local business to the protection of the State."6 Activities which superficially appear to be local in character, when isolated, may in fact have the required close or intimate relationship with the area of commerce to which the Act applies. The courts have stated that a project should be viewed as a whole in a realistic way and not broken down into its various phases so as to defeat the purposes of the Act.7

(e) Interpretations. In his task of distinguishing covered from non-covered employees the Administrator will be guided by authoritative court decisions. To the extent that prior administrative rulings, interpretations, practices and enforcement policies relating to employees in the construction industry are inconsistent or in conflict with the principles stated in this subpart, they are hereby rescinded and withdrawn.


§ 776.23 Employment in the construction industry.

(a) In general. The same principles for determining coverage under the Fair Labor Standards Act generally apply to employees in the building and construction industry. As in other situations, it is the employee's activities rather than the employer's business which is the important consideration, and it is immaterial if the employer is an independent contractor who performs the construction work for or on behalf of a firm which is engaged in

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interstate commerce or in the production of goods for such commerce. 8
(b) On both covered and non-covered work. If the employee is engaged in both covered and non-covered work during the workweek he is entitled to the benefits of the Act for the entire week regardless of the amount of covered activities which are involved. The covered activities must, however, be regular or recurring rather than isolated, sporadic or occasional. 9
(c) On covered construction projects. All employees who are employed in connection with construction work which is closely or intimately related to the functioning of existing instrumentalities and channels of interstate commerce or facilities for the production of goods for such commerce are within the scope of the Act. Closely or intimately related construction work includes the maintenance, repair, reconstructions, redesignings, improvements, replacements, enlargements or extensions of a covered facility. 10 If the construction project is subject to the Act, all employees who participate in the integrated effort are covered, including not only those who are engaged in work at the site of the construction such as mechanics, laborers, handymen, truckdrivers, watchmen, guards, timekeepers, inspectors, checkers, surveyors, payroll workers, and repairmen, but also office, clerical, bookkeeping, auditing, promotional, drafting, engineering, custodial and stockroom employees. 11

9 See General Coverage Bulletin, §§ 776.2 and 776.4.
11 Mitchell v. Brown Engineering Co. ante; Chambers Construction Co. and L. H. Chambers

§ 776.24 Travel in connection with construction projects.

The Act also applies to employees who regularly travel across State lines in the performance of their duties, even though the construction project itself

9 See General Coverage Bulletin, §§ 776.2 and 776.4.