Wage and Hour Division, Labor

§ 779.104 Employees “engaged in the production of goods for commerce.”

The activities constituting “production” within the meaning of the phrase “engaged in * * * the production of goods for commerce” are defined in section 3(j) of the Act. (The statutory definition is set forth in §779.13.) The handling or otherwise working on goods intended for shipment out of the State, directly or indirectly, in engagement in the “production” of goods for commerce. Thus, employees in retail stores who sell, pack, or otherwise work on goods which are to be shipped or delivered outside of the State are engaged in the production of goods for commerce. Typically, but not exclusively, employees engaged in the production of goods for interstate or foreign commerce, include those who work in manufacturing, processing and distributing establishments, including wholesale or retail establishments, that produce goods for interstate or foreign commerce. This includes everyone, including office, management, sales and shipping personnel, and maintenance, custodial and protective employees, whether they are employed by the producer or an intermediary. Employees may be covered even if their employer does not ship his goods directly in such commerce. The goods may leave the State through another firm. The workers may produce goods which become a part or ingredient of goods shipped in interstate or foreign commerce by another firm. Also covered are workers who are engaged in a closely related process or occupation directly essential to such production. (See §779.105.)

§ 779.105 Employees engaged in activities “closely related” and “directly essential” to the production of goods for commerce.

Some employees are covered because their work, although not actually a part of such production, is “closely related” and “directly essential” to it. This group of employees includes bookkeepers, stenographers, clerks, accountants and auditors and other office and white collar workers, and employees doing payroll, timekeeping and time study work for the producer of goods; employees in the personnel, labor relations, advertising, promotion, and public relations activities of the producing enterprise; work instructors for the producer; employees maintaining, servicing, repairing or improving the buildings, machinery, equipment, vehicles or other facilities used in the production of goods for commerce, and such custodial and protective employees as watchmen, guards, firemen, patrolmen, caretakers, stockroom workers, and warehousemen; and transportation workers bringing supplies, materials, or equipment to the producer’s premises, removing waste materials therefrom, or transporting materials or other goods, or performing such other transportation activities, as the needs of production may require. These examples are illustrative, rather than exhaustive, of the group of employees of a producer who are “engaged in the production of goods for commerce” by reason of performing activities closely related and directly essential to such production.

§ 779.106 Employees employed by an independent employer.

Where the work of an employee would be closely related and directly essential to the production of goods for commerce if he were employed by a producer of the goods, the mere fact that the employee is employed by an independent employer will not justify a different answer. (See §§776.17(c) and 776.19 of this chapter.)

§ 779.107 Goods defined.

The term “goods” is defined in section 3(l) of the Act and has a well established meaning under the Act since it has been contained in the statute from the date of its enactment in 1938. A comprehensive statement of the meaning of the term “goods” is contained in part 776 of this chapter, which also cites the court cases in which the term was construed. The statutory definition of “goods” is set forth in §779.14.