

§ 570.111

would be true even though the two establishments are contiguous. But in other situations the distance between the producing establishment and the minor's place of employment may be a decisive factor. Thus, a minor employed in clearing rights-of-way for power lines many miles away from the power plant cannot well be said to be employed "in or about" such establishment. In view of the great variety of establishments and employments, however, no hard and fast rule can be laid down which will once and for all distinguish between employments that are "about" an establishment and those that are not. Therefore, each case must be determined on its own merits. In determining whether a particular employment is "about" an establishment, consideration of the following factors should prove helpful:

- (1) Actual distance between the producing establishment and the minor's place of employment;
- (2) Nature of the establishment;
- (3) Ownership or control of the premises involved;
- (4) Nature of the minor's activities in relation to the establishment's purpose;
- (5) Identity of the minor's employer and the establishment's owner;
- (6) Extent of control by the producing establishment's owner over the minor's employment.

§ 570.111 Removal "within 30 days".

According to section 12(a) goods produced in an establishment in or about which oppressive child labor has been employed are barred as "hot goods" from being shipped or delivered for shipment in commerce in the following two situations: First, if they were removed from the establishment while any oppressive child labor was still being employed in or about it; second, if they were removed from an establishment in or about which oppressive child labor was no longer employed but less than 30 days had then elapsed since any such employment of oppressive child labor came to an end. Once any goods have been removed from a producing establishment within the above-mentioned thirty-day period, they are barred at any time thereafter from being shipped or delivered for shipment in

29 CFR Ch. V (7-1-06 Edition)

commerce so long as they remain "goods" for purposes of the Act.²¹ Goods are considered removed from an establishment just as soon as they are taken away from the establishment as that term has been defined.²² The statute does not require that this "removal" from the establishment be made for the purpose or in the course of a shipment or delivery for shipment in commerce. A "removal" within the meaning of the statute also takes place where the goods are removed from the establishment for some other purpose such as storage, the granting of a lien or other security interest, or further processing.

[16 FR 7008, July 20, 1951, as amended at 23 FR 6240, Aug. 14, 1958. Redesignated at 28 FR 1634, Feb. 21, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]

COVERAGE OF SECTION 12(c)

§ 570.112 General.

(a) Section 12(c) of the Act provides as follows:

No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in an enterprise engaged in commerce or in the production of goods for commerce.

(b) This provision, which was added by amendments of 1949 and 1961 to the Act, broadens child labor coverage to include employment in commerce. Moreover, it establishes a direct prohibition of the employment of oppressive child labor in commerce or in the production of goods for commerce. The legislative history pertaining to this provision leads to the conclusion that Congress intend its application to be generally consistent with that of wage and hours coverage provisions. The application of the provision depends on

²¹However, section 12(a) contains a provision relieving innocent purchasers from liability thereunder provided certain conditions are met. For a discussion of this provision, see § 570.128.

Also, section 15(a)(1) relieves any common carrier from liability under the Act for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier.

²²For a discussion of the meaning of "establishment," see § 570.109.

²³[Reserved]

the existence of two necessary elements: (1) The employment of "oppressive child labor"²⁴ by some employer and (2) the employment of such oppressive child labor in activities or enterprises which are in commerce or in the production of goods for commerce within the meaning of the Act.

[36 FR 25156, Dec. 29, 1971]

§ 570.113 Employment "in commerce or in the production of goods for commerce".

(a) The term "employ" is broadly defined in section 3(g) of the Act to include "to suffer or permit to work." The Act expressly provides that the term "employer" includes "any person acting directly or indirectly in the interest of an employer in relation to an employee". The nature of an employer-employee relationship is ordinarily to be determined not solely on the basis of the contractual relationship between the parties but also in the light of all the facts and circumstances. Moreover, the terms "employer" and "employ" as used in the Act are broader than the common-law concept of employment and must be interpreted broadly in the light of the mischief to be corrected. Thus, neither the technical relationship between the parties nor the fact that the minor is unsupervised or receives no compensation is controlling in determining whether an employer-employee relationship exists for purposes of section 12(c) of the Act. However, these are matters which should be considered along with all other facts and circumstances surrounding the relationship of the parties in arriving at such determination. The words "suffer or permit to work" include those who suffer by a failure to hinder and those who permit by acquiescence in addition to those who employ by oral or written contract. A typical illustration of employment of oppressive child labor by suffering or permitting an under-aged minor to work is that of an employer who knows that his employee is utilizing the services of such a minor as a helper or substitute in performing his employer's work. If the employer acquiesces in the practice or fails to exer-

cise his power to hinder it, he is himself suffering or permitting the helper to work and is, therefore, employing him, within the meaning of the Act. Where employment does exist within the meaning of the Act, it must, of course, be in commerce or in the production of goods for commerce or in an enterprise engaged in commerce or in the production of goods for commerce in order for section 12(c) to be applicable.

(b) As previously indicated, the scope of coverage of section 12(c) of the Act is, in general, coextensive with that of the wage and hours provisions. The basis for this conclusion is provided by the similarity in the language used in the respective provisions and by statements appearing in the legislative history concerning the intended effect of the addition of section 12(c). Accordingly, it may be generally stated that employees considered to be within the scope of the phrases "in commerce or in the production of goods for commerce" for purposes of the wage and hours provisions are also included within the identical phrases used in section 12(c). To avoid needless repetition, reference is herein made to the full discussion of principles relating to the general coverage of the wage and hours provisions contained in parts 776 and 779 of this chapter. In this connection, however, it should be borne in mind that lack of coverage under the wage and hours provisions or under section 12(c) does not necessarily preclude the applicability of section 12(a) of the Act.²⁶

[36 FR 25156, Dec. 29, 1971]

JOINT AND SEPARATE APPLICABILITY OF
SECTIONS 12(a) AND 12(c)

§ 570.114 General.

It should be noted that section 12(a) does not directly outlaw the employment of oppressive child labor. Instead, it prohibits the shipment or delivery for shipment in interstate or foreign commerce of goods produced in an establishment where oppressive child labor has been employed within 30 days before removal of the goods. Section

²⁴ "Oppressive child labor" is discussed in §§ 570.117 to 570.121, inclusive.

²⁶ See § 570.116