

## Wage and Hour Division, Labor

## § 780.1006

any place within the State, including other farms, packing or processing establishments, factories, transportation terminals, and other places. The broad term "any point" must be interpreted in the light of the purpose of the exemption to facilitate the harvesting of fruits or vegetables. Transportation from a farm to "any point" within the same State (such as a factory or processing plant) where some other purpose than harvesting is served is not exempt.

### **Subpart K—Employment of Homeworkers in Making Wreaths; Exemption From Minimum Wage, Overtime Compensation, and Child Labor Provisions Under Section 13(d)**

#### INTRODUCTORY

#### **§ 780.1000 Scope and significance of interpretative bulletin.**

Subpart A of this part 780 and this subpart K together constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(d) of the Fair Labor Standards Act of 1938, as amended. This section provides an exemption from the minimum wage, overtime pay, and child labor provisions of the Act for certain homeworkers employed in making wreaths from evergreens and in harvesting evergreens and other forest products for use in making wreaths. Attention is directed to the fact that a limited overtime exemption for employees employed in the decoration greens industry is provided under section 7(c) of the Act (see part 526 of this chapter). The section 7(c) exemption is not limited to homeworkers.

#### **§ 780.1001 General explanatory statement.**

Workers in rural areas sometimes engage, as a family unit, around the Christmas holidays, in gathering evergreens and making them into wreaths in their homes. Such workers, under well-settled interpretations by the Department of Labor and the courts, have been held to be employees of the firm which purchases the wreaths and fur-

nishes the workers with wire used in making such wreaths.

#### REQUIREMENTS FOR EXEMPTION

#### **§ 780.1002 Statutory requirements.**

Section 13(d) of the Fair Labor Standards Act exempts from the minimum wage provisions of section 6, the overtime requirements of section 7 and the child labor restrictions of section 12:

Any homemaker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

#### **§ 780.1003 What determines the application of the exemption.**

The application of this exemption depends on the nature of the employee's work and not on the character of the employer's business. To determine whether an employee is exempt an examination should be made of the activities which that employee performs and the conditions under which he performs them. Some employees of the employer may be exempt and others may not.

#### **§ 780.1004 General requirements.**

The general requirements of the exemption are that:

- (a) The employee must be a homemaker;
- (b) The employee must be engaged in making wreaths as a homemaker;
- (c) The wreaths must be made principally of evergreens;
- (d) Any harvesting of the evergreens and other forest products by the homeworkers must be for use in making the wreaths by homeworkers.

#### **§ 780.1005 Homeworkers.**

The exemption applies to "any homemaker." A homemaker within the meaning of the Act is a person who works for an employer in or about a home, apartment, tenement, or room in a residential establishment.

#### **§ 780.1006 In or about a home.**

Whether the work of an employee is being performed "in or about a home," so that he may be considered a

## § 780.1007

homeworker, must be determined on the facts in the particular case. In general, however the phrase "in or about a home" includes any home, apartment, or other dwelling place and surrounding premises, such yards, garages, sheds or basements. A convent, orphanage or similar institution is considered a home.

### **§ 780.1007 Exemption is inapplicable if wreath-making is not in or about a home.**

The section 13(d) exemption does not apply when the wreaths are made in or about a place which is not considered a "home". Careful consideration is required in many cases to determine whether work is being performed in or about a home. Thus, the circumstances under which an employee may engage in work in what ostensibly is a "home" may require the conclusion, on an examination of all the facts, that the work is not being performed in or about a home within the intent of the term and for purposes of section 13(d) of the Act.

### **§ 780.1008 Examples of places not considered homes.**

The following are examples of work-places which, on examination, have been considered not to be a "home":

(a) Living quarters allocated to and regularly used solely for production purposes, where workers work regular schedules and are under constant supervision by the employer, are not considered to be a home.

(b) While a convent, orphanage or similar institution is considered a home, an area in such place which is set aside for and used for sewing or other productive work under supervision is not a home.

(c) Where an employee performs work on wreaths in a home and also engages in work on the wreaths for the employer during that workweek in a factory, he is not exempt in that week, since some of his work is not performed in a home.

### **§ 780.1009 Wreaths.**

The only product which may be produced under the section 13(d) exemption by a homeworker is a wreath having no less than the specified evergreen

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

content. The making of a product other than a wreath is nonexempt even though it is made principally of evergreens.

### **§ 780.1010 Principally.**

The exemption is intended to apply to the making of an evergreen wreath. Such a wreath is one made "principally" of evergreens. *Principally* means chiefly, in the main or mainly (*Hartford Accident and Indemnity Co. v. Casualty Underwriters Insurance Co.*, 130 F. Supp. 56). A wreath is made "principally" of evergreens when it is comprised mostly of evergreens. For example, where a wreath is composed of evergreens and other kinds of material, the evergreens should comprise a greater part of the wreath than all the other materials together, including materials such as frames, stands, and wires. The principal portion of a wreath may consist of any one or any combination of the evergreens listed in section 13(d), including "other evergreens." The making of wreaths in which natural evergreens are a secondary component is not exempt.

### **§ 780.1011 Evergreens.**

The material which must principally be used in making the wreaths is listed as "natural holly, pine, cedar, or other evergreens." Other plants or materials cannot be used to satisfy this requirement.

### **§ 780.1012 Other evergreens.**

The "other evergreens" of which the wreath may be principally made include any plant which retains its greenness through all the seasons of the year, such as laurel, ivy, yew, fir, and others. While plants other than evergreens may be used in making the wreaths, such plants, whether they are forest products cultivated plants, cannot be considered as part of the required principal evergreen component of the wreath.

### **§ 780.1013 Natural evergreens.**

Only "natural" evergreens may comprise the principal part of the wreath. The word "natural" qualifies all of the evergreens listed in the section, including "other evergreens." The term *natural* means that the evergreens at the