

Wage and Hour Division, Labor

§ 780.209

NURSERY AND LANDSCAPING OPERATIONS

§ 780.205 Nursery activities generally.

The employees of a nursery who are engaged in the following activities are employed in "agriculture":

(a) Sowing seeds and otherwise propagating fruit, nut, shade, vegetable, and ornamental plants or trees (but not Christmas trees), and shrubs, vines, and flowers;

(b) Handling such plants from propagating frames to the field;

(c) Planting, cultivating, watering, spraying, fertilizing, pruning, bracing, and feeding the growing crop.

§ 780.206 Planting and lawn mowing.

(a) The planting of trees and bushes is within the scope of agriculture where it constitutes a step in the production, cultivation, growing, and harvesting of agricultural or horticultural commodities, or where it constitutes a practice performed by a farmer or on a farm as an incident to or in conjunction with farming operations (as where it is part of the subordinate marketing operations of the grower of such trees or bushes). Thus, employees of the nurseryman who raised such nursery stock are doing agricultural work when they plant the stock on private or public property, trim, spray, brace, and treat the planted stock, or perform other duties incidental to its care and preservation. Similarly, employees who plant fruit trees and berry stock not raised by their employer would be considered as engaged in agriculture if the planting is done on a farm as an incident to or in conjunction with the farming operation on that farm.

(b) On the other hand, the planting of trees and bushes on residential, business, or public property is not agriculture when it is done by employees of an employer who has not grown the trees and bushes, or who, if he has grown them, engages in the planting operations as an incident, not to his farming operations, but to landscaping operations which include principally the laying of sod and the construction of pools, walks, drives, and the like.

(c) The mowing of lawns, except where it can be considered incidental to farming operations, is not agricultural work.

§ 780.207 Operations with respect to wild plants.

Nurseries frequently obtain plants growing wild in the woods or fields which are to be further cultivated by the nursery before they are sold by it. Obtaining such plants is a practice which is incidental to farming operations. The activities are therefore within the scope of agriculture if performed by a farmer or on a farm. Thus, employees of the nursery are engaged in agriculture when performing these activities. On the other hand, employees of an independent contractor performing these activities off the farm would not be engaged in agriculture. The transplanting of such wild plants in the nursery is performed "on a farm" and is an agricultural activity whether performed by employees of an independent contractor or by employees of the nursery.

§ 780.208 Forest and Christmas tree activities.

Operations in a forest tree nursery such as seeding new beds and growing and transplanting forest seedlings are not farming operations. The planting, tending, and cutting of Christmas trees do not constitute farming operations. If such operations on forest products are within section 3(f), they must qualify under the second part of the definition dealing with incidental practices. (See § 780.201.)

§ 780.209 Packing, storage, warehousing, and sale of nursery products.

Employees of a grower of nursery stock who work in packing and storage sheds sorting the stock, grading and trimming it, racking it in bins, and packing it for shipment are employed in "agriculture" provided they handle only products grown by their employer and their activities constitute an established part of their employer's agricultural activities and are subordinate to his farming operations. Such employees are not employed in agriculture when they handle the products of other growers (*Mitchell v. Huntsville Nurseries*, 267 F. 2d 286; *Jordan v. Stark Bros. Nurseries & Orchards Co.*, 45 F. Supp. 769). Agricultural activities