

29 C.F.R. § 1620.8

“Employer,” “employee,” and “employ” defined.

The words “employer,” “employee,” and “employ” as used in the EPA are defined in the FLSA. Economic reality rather than technical concepts determines whether there is employment within the meaning of the EPA. The common law test based upon the power to control the manner of performance is not applicable to the determination of whether an employment relationship subject to the EPA exists. An “employer,” as defined in section 3(d) of the FLSA, means “any person acting directly or indirectly in the interest of an employer in relation to an employee” and includes a “public agency,” as defined in section 3(x). An “employee,” as defined in section 3(e) of the FLSA, “means any individual employed by an employer.” “Employ,” as used in the EPA, is defined in section 3(g) of the FLSA to include “to suffer or permit to work.” Two or more employers may be both jointly or severally responsible for compliance with the statutory requirements applicable to employment of a particular employee.

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