
29 C.F.R. § 776.19

Employees of independent employers meeting needs of producers for commerce.

(a) *General statement.* (1) If an employee of a producer of goods for commerce would not, while performing particular work, be “engaged in the production” of such goods for purposes of the Act under the principles heretofore stated, an employee of an independent employer performing the same work on behalf of the producer would not be so engaged. Conversely, as shown in the paragraphs following, the fact that employees doing particular work on behalf of such a producer are employed by an independent employer rather than by the producer will not take them outside the coverage of the Act if their work otherwise qualifies as the “production” of “goods” for “commerce.”

(2) Of course, in view of the Act's definition of “goods” as including “any part or ingredient” of goods (see § 776.20 (a), (c)), employees of an independent employer providing other employers with materials or articles which become parts or ingredients of goods produced by such other employers for commerce are actually employed by a producer of goods for commerce and their coverage under the Act must be considered in the light of this fact. For example, an employee of such an independent employer who handles or in any manner works on the goods which become parts or ingredients of such other producer's goods is engaged in actual production of goods (parts or ingredients) for commerce, and the question of his coverage is determined by this fact without reference to whether his work is “closely related” and “directly essential” to the production by the other employer of the goods in which such parts or ingredients are incorporated. So also, if the employee is not engaged in the actual production of such parts or ingredients, his coverage will depend on whether as an employee of a producer of goods for commerce, his work is “closely related” and “directly essential” to the production of the parts or ingredients, rather than on the principles applicable in determining the coverage of employees of an independent employer who does not himself produce the goods for commerce. ^[1]

(3) 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. ^[2] This does not necessarily mean that such work in every case will remain “closely related” to production when performed by employees of an independent employer. It will, of course, be as “directly essential” to production in the one case as in the other. (See § 776.17(c)). But in determining whether an employee's work is “closely” or only remotely related to the production of goods for commerce by an employer other than his own, the nature and purpose of the business in which he is employed and in the course of which he performs the work may sometimes become important.

Such factors may prove decisive in particular situations where the employee's work, although “directly essential” to the production of goods by someone other than his employer, is not far from the borderline between those activities which are “directly essential” and those which are not. In such a situation, it may appear that his performance of the work is so much a part of an essentially local business carried on by his employer without any intent or purpose of aiding production of goods for commerce by others that the work, as thus performed, may

not reasonably be considered “closely related” to such production. ^[3] In other situations, however, where the degree to which the work is directly essential to production by the producer is greater the fact that the independent employer is engaged in a business having local aspects may not be sufficient to negate a close relationship between his employees' work and such production. ^[4] And it seems clear that where the independent employer operates a business which, unlike that of the ordinary local merchant, is directed to providing producers with materials or services directly essential to the production of their goods for commerce, the activities of such a business may be found to be “closely related” to such production. ^[5] In such event, all the employees of the independent employer whose work is part of his integrated effort to meet such needs of producers are covered as engaged in work closely related and directly essential to production of goods for commerce. ^[6]

This document is only available to subscribers. Please log in or purchase access.

[Purchase Login](#)