
29 C.F.R. § 779.238

Engagement in described activities determined on annual basis.

As set forth in the preceding section an enterprise to be a “covered enterprise” must have at least some employees engaged in certain described activities. This requirement will be determined on an annual basis in order to give full effect to the intent of Congress. Thus, it is not necessary that the enterprise have two or more employees engaged in the named activities every week. An enterprise described in section 3(s)(1) or (5) of the prior Act or in section 3(s)(1) of the Act as it was amended in 1966 will be considered to have employees engaged in commerce or in the production of goods for commerce, including the handling, selling or otherwise working on goods that have been moved in or produced for commerce by any person, if during the annual period which it uses in calculating its annual sales for purposes of the other conditions of these sections, it regularly and recurrently has at least two or more employees engaged in such activities. On the other hand, it is plain that an enterprise that has employees engaged in such activities only in isolated or sporadic occasions, will not meet this condition.

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