
29 C.F.R. § 779.309

Employed “in” but not “by.”

Since the exemptions by their terms apply to the employees “employed by” the exempt establishment, it follows that those exemptions will not extend to other employees who, although actually working in the establishment and even though employed by the same person who is the employer of all under section 3(d) of the Act, are not “employed by” the exempt establishment. Thus, traveling auditors, manufacturers' demonstrators, display-window arrangers, sales instructors, etc., who are not “employed by” an exempt establishment in which they work will not be exempt merely because they happen to be working in such an exempt establishment, whether or not they work for the same employer. (*Mitchell v. Kroger Co.*, 248 F. 2d 935 (CA-8).) For example, if the manufacturer sends one of his employees to demonstrate to the public in a customer's exempt retail establishment the products which he has manufactured, the employee will not be considered exempt under section 13(a)(2) since he is not employed by the retail establishment but by the manufacturer. The same would be true of an employee of the central offices of a chain-store organization who performs work for the central organization on the premises of an exempt retail outlet of the chain (*Mitchell v. Kroger Co.*, supra.)

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