
29 C.F.R. § 779.338

Effect of 1961 and 1966 amendments.

(a) The 1961 amendments to the Fair Labor Standards Act narrowed the exemption for retail or service establishments by permitting section 13(a)(2) to be applied only to an establishment which was not in a covered enterprise, or (if it was in such an enterprise) which had an annual gross volume of sales of less than \$250,000 (exclusive of specified taxes). There were certain exemptions to this general principle. These exceptions were set out in section 13(a)(2)(ii) and (iii). The establishments enumerated therein were exempt whether or not they were in a covered enterprise and regardless of the annual dollar volume of sales. They were: Hotels, motels, restaurants, motion picture theaters, seasonally operated amusement or recreational establishments, hospitals, institutions primarily engaged in the care of the sick, the aged, the mentally ill or defective residing on the premises of the institution, and schools for physically or mentally handicapped or gifted children. These establishments were exempt if they met the basic 50 percent in State sales test and the 75 percent retail sales test of section 13(a)(2). The 1966 amendments to the Act repealed sections 13(a)(2)(ii) and (iii). Now to be exempt under section 13(a)(2) hotels, motels, and restaurants must meet the same tests as other retail or service establishments (see § 779.337). Seasonal amusement or recreational establishments and motion picture theaters now have special exemptions from both the minimum wage and overtime pay provisions of the Act as provided by the 1966 amendments in sections 13(a)(3) and 13(a)(9) respectively.

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