
29 C.F.R. § 779.356

Application of exemptions to employees.

(a) *Employees who may be exempt under sections 13(a)(2) and 13(a)(4).* These exemptions apply on an establishment basis (see §§ 779.302-779.306). Accordingly, where an establishment of a dealer in lumber and building materials qualifies as an exempt retail or service establishment under section 13(a)(2) or as an exempt establishment under section 13(a)(4), as explained in § 779.354, the exemption from the minimum wage and overtime pay requirements of the Act provided by such section will apply, subject to the limitations hereafter noted in this section, to all employees who are employed “by” such establishment (see §§ 779.307-779.311) in activities within the scope of its business (§ 779.308) and who are not employed by the employer in performing central office or warehouse work of an organization operating several such establishments (§ 779.310; *McComb v. W. E. Wright Co.*, 168 F. 2d 40, cert. denied 335 U.S. 854). Neither exemption extends to employees employed in performing the work of a nonexempt establishment (§ 779.311) or such activities as construction work. Employees employed in making and processing of lumber and building materials for sale do not come within the section 13(a)(2) exemption; they are exempt only if employed by an establishment which qualifies as an exempt establishment under section 13(a)(4) as explained in § 779.354 and if their work in the making or processing of such materials is done at such establishment. How duties relating to the processing or manufacturing of such materials affect the application of these exemptions is discussed in further detail in paragraphs (b) and (c) of this section.

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