
29 C.F.R. § 780.717

Determining whether there is employment “by” the establishment.

- (a) No single test will determine whether a worker is in fact employed “by” a country elevator establishment. This question must be decided on the basis of the total situation (*Rutherford Food Corp. v. McComb*, 331 U.S. 722; *U.S. v. Silk*, 331 U.S. 704). Clearly, an employee is so employed where he is hired by the elevator, engages in its work, is paid by the elevator and is under its supervision and control.
- (b) “Employed by” requires that there be an employer-employee relationship between the worker and the employer engaged in operating the elevator. The fact, however, that the employer carries an employee on the payroll of the country elevator establishment which qualifies for exemption does not automatically extend the exemption to that employee. In order to be exempt an employee must actually be “employed by” the exempt establishment. This means that whether the employee is performing his duties inside or outside the establishment, he must be employed in the work of the exempt establishment itself in activities within the scope of its exempt business in order to meet the requirement of actual employment “by” the establishment (see *Walling v. Connecticut Co.*, 154 F. 2d 552).

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