
29 C.F.R. § 780.721

Employment in the particular workweek as test of exemption.

The period for determining whether the “area of production” requirement of section 13(b)(14) is met is prescribed in the regulations in part 536 of this chapter. Whether or not an establishment is one commonly recognized as a country elevator must be tested by general functions and attributes over a representative period of time, as previously explained, and requires reexamination for exemption purposes only if these change. But insofar as the exemption depends for its application on the employment of employees, it applies on a workweek basis. An employee employed by the establishment is not exempt in any workweek when more than five employees “are employed in the establishment in such operations,” as previously explained (see §§ 780.712 through 780.715). Nor is any employee within the exemption in a workweek when he is not employed “by” the establishment within the meaning of section 13(b)(14) (see §§ 780.716 through 780.719). This is in accordance with the general rule that the unit of time to be used in determining the application of the Act and its exemptions to an employee is the workweek. (See *Overnight Motor Transportation Co. v. Missel*, 316 U.S. *Mitchell v. Hunt*, 263 F. 2d 913; *McComb v. Puerto Rico Tobacco Marketing Co-op. Ass'n*, 80 F. Supp. 953, affirmed 181 F. 2d 697.) A workweek is a fixed and regularly recurring interval of seven consecutive 24-hour periods. It may begin at any hour of any day set by the employer and need not coincide with the calendar week. Once the workweek has been set it commences each succeeding week on the same day and at the same hour. Changing the workweek for the purpose of escaping the requirements of the Act is not permitted.

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