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29 C.F.R. § 790.10

"Compensable * * * by a custom or practice."

(a) A "preliminary" or "postliminary" activity of the type described in section 4(a) of the Portal Act may be "compensable" within the meaning of section 4(b), by a custom or practice as well as by a contract. If it is so compensable, the relief afforded by section 4 is not available to the employer with respect to such activity, [1] and section 4(d) does not operate to exclude the time spent in such activity from hours worked under the Fair Labor Standards Act. [2] Accordingly, in the event that no "express provision of a written or nonwritten contract" makes compensable the activity in question, it is necessary to determine whether the activity is made compensable by a custom or practice, not inconsistent with such a contract, in effect at the establishment or other place where the employee was employed. [3]

(b) The meaning of the word "compensable" is the same, for purposes of the statute, whether a contract or a custom or practice is involved. [4]

(c) The phrase, "custom or practice," is one which, in common meaning, is rather broad in scope. The meaning of these words as used in the Portal Act is not stated in the statute; it must be ascertained from their context and from other available evidence of the Congressional intent, with such aid as may be had from the many judicial decisions interpreting the words "custom" and "practice" as used in other connections. Although the legislative history casts little light on the precise limits of these terms, it is believed that the Congressional reference to contract, custom or practice was a deliberate use of non-technical words which are commonly understood and broad enough to cover every normal situation under which an employee works or an employer for compensation. [5] Accordingly, "custom" and "practice," as used in section 4(b) of the Portal Act, may be said to be descriptive generally of those situations where an employer, without being compelled to do so by an express provision of a contract, has paid employees for certain activities performed. One of the sponsors of the legislation in the House of Representatives indicated that the intention was not only "to protect every collective bargaining agreement about these activities" but "to protect the agreement between one workman and his employer" and "every practice or custom which we assume must have entered into the minds of the people when they made the contract." [6]