
29 C.F.R. § 790.13

General nature of defense.

(a) Under the provisions of sections 9 and 10 of the Portal Act, an employer has a defense against liability or punishment in any action or proceeding brought against him for failure to comply with the minimum wage and overtime provisions of the Fair Labor Standards Act, where the employer pleads and proves that “the act or omission complained of was in good faith in conformity with and in reliance on any administrative regulation, order, ruling, approval, or interpretation” or “any administrative practice or enforcement policy * * * with respect to the class of employers to which he belonged.” In order to provide a defense with respect to acts or omissions occurring on or after May 14, 1947 (the effective date of the Portal Act), the regulation, order, ruling, approval, interpretation, administrative practice or enforcement policy relied upon and conformed with must be that of the “Administrator of the Wage and Hour Division of the Department of Labor,” and a regulation, order, ruling, approval, or interpretation of the Administrator may be relied on only if it is in writing. ^[1] But where the acts or omissions complained of occurred before May 14, 1947, the employer may show that they were in good faith in conformity with and in reliance on “any” (written or nonwritten) administrative regulation, order, ruling, or interpretation of “any agency of the United States,” or any administrative practice or enforcement policy of “any such agency” with respect to the class of employers to which he belonged. ^[2] In all cases, however, the act or omission complained of must be both “in conformity with” ^[3] and “in reliance on” ^[4] the administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy, as the case may be, and such conformance and reliance and such act or omission must be “in good faith.” ^[5] The relief from liability or punishment provided by sections 9 and 10 of the Portal Act is limited by the statute to employers who both plead and prove all the requirements of the defence. ^[6]

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