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## 29 C.F.R. § 790.14

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### “In conformity with.”

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- (a) The “good faith” defense is not available to an employer unless the acts or omissions complained of were “in conformity with” the regulation, order, ruling, approval, interpretation, administrative practice or enforcement policy upon which he relied. <sup>[1]</sup> This is true even though the employer erroneously believes he conformed with it and in good faith relied upon it; actual conformity is necessary.
- (b) An example of an employer not acting “in conformity with” an administrative regulation, order, ruling, approval, practice, or enforcement policy is a situation where an employer receives a letter from the Administrator of the Wage and Hour Division, stating that if certain specified circumstances and facts regarding the work performed by the employer's employees exist, the employees are, in his opinion, exempt from provisions of the Fair Labor Standards Act. One of these hypothetical circumstances upon which the opinion was based does not exist regarding these employees, but the employer, erroneously assuming that this circumstance is irrelevant, relies upon the Administrator's ruling and fails to compensate the employees in accordance with the Act. Since he did not act “in conformity” with that opinion, he has no defense under section 9 or 10 of the Portal Act.

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