
29 C.F.R. § 790.15

“Good faith.”

- (a) One of the most important requirements of sections 9 and 10 is proof by the employer that the act or omission complained of and his conformance with and reliance upon an administrative regulation, order, ruling, approval, interpretation, practice or enforcement policy, were in good faith. The legislative history of the Portal Act makes it clear that the employer's “good faith” is not to be determined merely from the actual state of his mind. Statements made in the House and Senate indicate that “good faith” also depends upon an objective test—whether the employer, in acting or omitting to act as he did, and in relying upon the regulation, order, ruling, approval, interpretation, administrative practice or enforcement policy, acted as a reasonably prudent man would have acted under the same or similar circumstances. ^[1] “Good faith” requires that the employer have honesty of intention and no knowledge of circumstances which ought to put him upon inquiry. ^[2]
- (b) Some situations illustrating the application of the principles stated in paragraph (a) of this section may be mentioned. Assume that a ruling from the Administrator, stating positively that the Fair Labor Standards Act does not apply to certain employees, is received by an employer in response to a request which fully described the duties of the employees and the circumstances surrounding their employment. It is clear that the employer's employment of such employees in such duties and under such circumstances in reliance on the Administrator's ruling, without compensating them in accordance with the Act, would be in good faith so long as the ruling remained unrevoked and the employer had no notice of any facts or circumstances which would lead a reasonably prudent man to make further inquiry as to whether the employees came within the Act's provisions. Assume, however, that the Administrator's ruling was expressly based on certain court decisions holding that employees so engaged in commerce or in the production of goods for commerce, and that the employer subsequently learned from his attorney that a higher court had reversed these decisions or had cast doubt on their correctness by holding employees similarly situated to be engaged in an occupation necessary to the production of goods for interstate commerce. Assume further that the employer, after learning of this, made no further inquiry but continued to pay the employees without regard to the requirements of the Act in reliance on the Administrator's earlier ruling. In such a situation, if the employees later brought an action against the employer, the court might determine that they were entitled to the benefits of the Act and might decide that the employer, after learning of the decision of the higher court, knew facts which would put a reasonably prudent man upon inquiry and therefore had not provided his good faith in relying upon the Administrator's ruling after receiving this advice.

This document is only available to subscribers. Please log in or purchase access.

[Purchase Login](#)