
29 C.F.R. § 790.16

“In reliance on.”

- (a) In addition to acting (or omitting to act) in good faith and in conformity with an administrative regulation, order, ruling, approval, interpretation, enforcement policy or practice, the employer must also prove that he actually relied upon it. ^[1]
- (b) Assume, for example, that an employer failed to pay his employees in accordance with the overtime provisions of the Fair Labor Standards Act. After an employee suit has been brought against him, another employer calls his attention to a letter that had been written by the Administrator of the Wage and Hour Division, in which the opinion was expressed that employees of the type employed by the defendant were exempt from the overtime provisions of the Fair Labor Standards Act. The defendant had no previous knowledge of this letter. In the pending employee suit, the court may decide that the opinion of the Administrator was erroneous and that the plaintiffs should have been paid in accordance with the overtime provisions of the Fair Labor Standards Act. Since the employer had no knowledge of the administrator's interpretation at the time of his violations, his failure to comply with the overtime provisions could not have been “in reliance on” that interpretation; consequently, he has no defense under section 9 or section 10 of the Portal Act.

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