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## 29 C.F.R. § 790.18

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### “Administrative practice or enforcement policy.”

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- (a) The terms “administrative practice or enforcement policy” refer to courses of conduct or policies which an agency has determined to follow <sup>[1]</sup> in the administration and enforcement of a statute, either generally, or with respect to specific classes of situations. <sup>[2]</sup> Administrative practices and enforcement policies may be set forth in statements addressed by the agency to the public. <sup>[3]</sup> Although they may be, and frequently are, based upon decisions or views which the agency has set forth in its regulations, orders, rulings, approvals, or interpretations, nevertheless administrative practices and enforcement policies differ from these forms of agency action in that such practices or policies are not limited to matters concerned with the meaning or legal effect of the statutes administered by the agency and may be based wholly or in part on other considerations.
- (b) To illustrate this distinction, suppose the Administrator of the Wage and Hour Division issues a general statement indicating that in his opinion a certain class of employees come within a specified exemption from provisions of the Fair Labor Standards Act in any workweek when they do not engage in a substantial amount of nonexempt work. Such a statement is an “interpretation” within the meaning of sections 9 and 10 of the Portal Act. Assume that at the same time, the Administrator states that for purposes of enforcement, until further notice such an employee will be considered as engaged in a substantial amount of nonexempt work in any workweek when he spends in excess of a specified percentage of his time in such nonexempt work. This latter type of statement announces an “administrative practice or enforcement policy” within the meaning of sections 9 and 10 of the Portal Act.
- (c) An administrative practice or enforcement policy may, under certain circumstances be at variance with the agency's current interpretation of the law. For example, suppose the Administrator announces that as a result of court decisions he has changed his view as to coverage of a certain class of employees under the Fair Labor Standards Act. However, he may at the same time announce that in order to give affected employers an opportunity to make the adjustments necessary for compliance with the changed interpretation, the Wage and Hour Division will not commence to enforce the Act on the basis of the new interpretation until the expiration of a specified period.

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