

Chapter 23

NEWSPAPER AND OTHER COMMUNICATION EXEMPTIONS

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23a NEWSPAPERS: SECTION 13(a)(8)

23a00 General provisions.

- (a) Section 13(a)(8) provides an exemption from the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) for “any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where *published* or counties contiguous thereto.”
- (b) The exemption applies only where the major part of the newspaper’s circulation is within the county in which it is published, within contiguous counties, or within some combination of these counties. The exemption would apply, for example, where none of the circulation is within the county in which a newspaper is published provided a major part of its circulation is within contiguous counties. A “contiguous county,” for purposes of section 13(a)(8), means a county which at some point shares a common boundary with the county in which the newspaper is published. Contiguous counties need not be in the same state.

23a01 Newspaper devoted to court news and legal notices.

A daily publication which contains news of the local courts, legal notices, other matters pertaining to court proceedings, and advertisements is a newspaper within the meaning of the section 13(a)(8) exemption.

23a02 Shopping news publication.

A publication, usually referred to as a shopping news or guide, which contains some news even though small in amount and some advertising copy is considered a newspaper within the meaning of section 13(a)(8).

23a03 Publication of two or more newspapers.

Where a publishing company publishes more than one newspaper, each newspaper may be treated separately for the purpose of determining whether the circulation of such papers is less than the maximum set forth in section 13(a)(8). If the situation is one where the purported separate publications are properly to be regarded as one and the same newspaper, the total circulation of both newspapers would have to be considered in determining whether the exemption applies. If the two publications, in addition to their different mastheads, carry different local news items, the publications should be considered as two different newspapers in testing for the exemption under section 13(a)(8).

23a04 Employees of a printer.

Employees of a printer who merely prints the newspaper for a publisher are not within the section 13(a)(8) exemption.

23a05 Non-exempt work.

Except as provided by 29 CFR 786.250 (*see* FOH 23a06), the section 13(a)(8) exemption does not apply to an employee in a workweek during which, in addition to his work on an exempt newspaper, he performs any other work which is subject to the FLSA (including enterprise coverage) and not within the scope of some other exemption.

23a06 **Job printing.**

Job printing pursuant to 29 CFR 786.250 refers to printing work for outside customers and does not include printing done by the employer at his own establishment for his own business operations. For example, the printing of a newspaper with a circulation of 4,000 or more which is published by the same employer is not considered job printing.

23a07 **Printing a newspaper published by others.**

The mere printing of a newspaper which is published by others is to be regarded as job printing for purposes of section 13(a)(8). *See* FOH 23a06.

23a08 **Circulation.**

The word “circulation” as used in section 13(a)(8) includes all copies of the publication circulated or distributed by mail or otherwise, whether paid for or free.

23a09 **Newspaper selling office supplies and stationery.**

Some small town newspapers sell at retail small amounts of ordinary office supplies and stationery at the newspaper offices. Any employee who engages in the sale of such items will not be exempt if the newspaper is part of a section 3(s)(1) enterprise or if any of the sales work is individually covered. However, the Wage and Hour Division (WHD) would not consider the exemption lost where the sales are made to individuals or small local businesses and the only element of interstate commerce would be that some portion of the stationery might be used in the writing of interstate letters.

23a10 **Circulars.**

Circulars ordinarily lack the characteristics of a newspaper. However, work performed by a publisher who publishes circulars for incorporation into a section 13(a)(8) exempt newspaper which he publishes would be exempt even if the printing of such circulars were jobbed out.

23b **NEWSPAPER DELIVERY TO CONSUMER: SECTION 13(d)**

23b00 **General provisions.**

Section 13(d) exempts from the provisions of sections 6, 7, and 12 “any employee engaged in the delivery of newspapers to the consumer.” The term newspaper is considered as having the same meaning under section 13(d) as under section 13(a)(8).

23b01 **Effect of non-exempt work.**

- (a) As section 13(d) is a child labor exemption as well as a minimum wage and overtime exemption, there can be no tolerance for non-exempt work. If any of the work performed by the minor is not exempt under the section, the exemption does not apply.

- (b) However, if the minors are 14 and 15 years old, their employment may be permissible even though the section 13(d) exemption is defeated by the performance of non-exempt work. For example, if the duties of the minors consist wholly of exempt work and non-exempt work which is permitted by child labor Reg 3, (29 CFR 570, Subpart C) their employment would be permissible provided it complies with the conditions of that regulation. One of the conditions is that the work must not be performed so as to be a part of the manufacturing process and must not be performed in any manufacturing or processing room or work place.

23b02 Newspaper folding.

The folding of newspapers by a minor as an incident to his own sale or delivery of the newspapers to individual consumers is work exempt under section 13(d), whether performed in or out of the newspaper plant. However, the folding by the minor of newspapers for delivery by other newsboys does not constitute work which is immediately incidental to his own delivery work, and therefore, is not exempt.

23b03 Soliciting subscriptions to newspapers.

- (a) Situations may be encountered where employees are engaged in the door-to-door solicitation of newspaper subscriptions. Where the employees carry current issues of the newspaper and attempt to sell them as part of their solicitation work, such employment is considered to be within the section 13(d) exemption. The work can reasonably be regarded as involving the street sale of newspapers to the consumer.
- (b) However, the solicitation of newspaper subscriptions for delivery by a person *other* than the soliciting employee would not be exempt work under section 13(d). The solicitation of newspaper subscriptions for delivery by other persons (*e.g.*, newsboys) does not constitute work relating to the newsboy's delivery of newspapers to the consumer. Nevertheless, the possible application of the 29 CFR 541.5 exemption should not be overlooked. The work may be permissible under child labor Reg 3 provided it complies with the conditions of that regulation.

23b04 Collection of insurance premiums from subscribers by carriers.

Certain newspapers, as a sales promotion device, may sell accident and health insurance to their subscribers. The subscriber makes the initial purchase of the insurance from the newspaper by mail. The insurance premiums (usually 10 cents a week) are paid by the subscribers to the carrier who delivers their newspapers at the same time that the carrier collects for the newspapers. The insurance is sold only to the subscribers of the newspaper and the carrier collects insurance premiums only from subscribers to whom he also delivers the newspaper. Under these circumstances, the collection of insurance premiums by a carrier as a part of his collection of the newspaper subscription is an incidental activity to the delivery of the newspaper and collection therefor, and thus will not defeat the section 13(d) exemption.

23c SWITCHBOARD OPERATOR: SECTION 13(a)(10)

23c00 General provisions.

Section 13(a)(10) provides a minimum wage and overtime exemption for “any switchboard operator employed by an independently owned public telephone company which has not more than 750 stations.”

23c01 Independently owned public telephone company.

- (a) The unit to which the 750 station test is applied for purposes of section 13(a)(10) is “an independently owned public telephone company.” The exemption is thus limited to small telephone companies the ownership of which is independent of the ownership of any other telephone company. For example, where a telephone company’s stock is owned by another company the two telephone companies form one independently owned public telephone company for the purposes of the exemption. Therefore, the exemption would not apply if the total stations of the two companies exceed 750.
- (b) The phrase “independently owned” as used in section 13(a)(10) is not synonymous with the phrase “separate company.” Thus, where several telephone companies are under common ownership, the exemption will not apply if the total stations serviced by the several companies exceed 750.

23c02 Switchboard operator.

- (a) If all other tests are met, the section 13(a)(10) exemption is available only for employees employed in the capacity of switchboard operator. Clerical work in connection with subscribers’ long distance calls or telegrams, so-called secretarial services performed by the operator for subscribers through the use of the switchboard itself, the making of minor repairs, the testing of lines with linemen, the billing of customers, the collection of bills from customers who call at the exchange, and like work which is customarily performed by switchboard operators employed by such a small telephone company comes within the exemption.
- (b) Whether such other duties as sales promotion or public relations work, soliciting new business, making bank deposits, or collecting bills at customers’ homes or business places are exempt or non-exempt depends upon whether such work is customarily performed as a part of the duties of a switchboard operator employed by such a small telephone company. This will generally be determined on the basis of functions necessarily so performed because the operator is the only representative of the telephone company available to perform such services, in which event the duties would be exempt.
- (c) The exemption is not applicable to such operators who spend more than 20 percent of their working time in any workweek in non-exempt work. *See* 29 CFR 786, subpart C.

23c03 “Station” defined.

The term “station,” as used in section 13(a)(10), means a telephone transmitting and receiving instrument, and includes extension telephones, and telephones for which switching service is provided.

23c04 Application of 750 station test.

- (a) In order for the exemption to apply, the switchboard operators employed by the independently owned public telephone company may provide operator service for not more

than a combined total of 750 stations. Where operators of one company's exchanges provide direct toll, information and assistance services to subscribers of a second company's exchanges, all the stations of the second company's exchanges so serviced shall be added to those of the first company's exchanges to determine if more than 750 stations are served by the first company.

- (b) Stations of a second company's exchange shall not be counted as served by the exchanges of the company being tested if the operators of the latter merely place calls with or through the second company's exchange.
- (c) Where a dial is installed in a manual exchange of the company for the sole purpose of furnishing toll service on calls between subscribers of the manual exchange and another company's exchange which has a dial operation, the stations served by such other company's dial exchange shall not be included as stations served by the operators of the manual exchange of the company being tested for the exemption.

23c05 Workweek applicability.

The section 13(a)(10) exemption applies on a workweek basis.

23c06 (Reserved.)

23c07 Telephone-answering and message relaying service.

The section 13(a)(10) exemption does not apply to an employee engaged in operating a telephone switchboard in the office of a telephone-answering service or other business which does not provide telephone service to the general public. Nor does the exemption apply to an employee who uses a telephone in his home to provide a service limited to answering telephone calls and taking and relaying messages, and who does not operate a telephone switchboard.

23d RADIO AND TELEVISION ANNOUNCER, NEWS EDITOR, OR CHIEF ENGINEER: SECTION 13(b)(9)

23d00 General provisions and 29 CFR 793.

- (a) Section 13(b)(9) provides an exemption from the overtime provisions of the FLSA for "any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Office of Management and Budget, which has a total population in excess of one hundred thousand, or (B) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area."
- (b) 29 CFR 793 contains the interpretations by the Administrator of the Wage & Hour Division of the scope and terms of this exemption.

23d01 Population counts and standard metropolitan statistical areas.

- (a) The Office of Management and Budget (OMB) defines standard metropolitan statistical areas (SMSAs) and their 1980 populations. The 1980 census figures for the individual states are located in the district offices that cover them.
- (b) In determining whether the major studio is located in a city or town or SMSA of 100,000 population or less, as set forth in Test (A), or whether the major studio is located in a city or town of 25,000 or less, as set forth in Test (B), the 1980 U.S. decennial census of population shall be used for all workweek's beginning on or after 01/17/1982 and the 1970 U.S. decennial census of population shall be used for all workweeks beginning prior to 01/17/1982.
- (c) In determining whether such city or town is part of an SMSA, as defined and designated by the OMB as provided in Tests (A) and (B), the list of SMSA's will be used. However, the determination for the SMSA must be made on the basis of the 1980 figures.

23d02 Location of major studio outside corporate limits of town or city.

The fact that the major studio of a small radio or television station is located as much as one mile outside the corporate limits of the city or town it serves would not of itself preclude exemption under either clause (A) or clause (B) of section 13(b)(9), provided all other requirements are met. Cases involving greater distances should be referred through channels to the regional solicitor of labor.

23d03 Cable TV systems.

Unless a particular cable television system is licensed as a television broadcasting station by the Federal Communications Commission (FCC), section 13(b)(9) will not apply. *See* 29 CFR 793.16.

23d04 News editor.

A "news editor" is defined in 29 CFR 793.8 to mean an employee who gathers, edits, and rewrites the news. He or she may also select and prepare news items for broadcast and present the news on the air. An employee who is primarily engaged in the above duties and in activities which are an integral part thereof will be considered to be employed as a news editor. Thus, where an employee of a qualifying radio or television station gathers, edits, and rewrites his or her own material, or that of other employees, without a higher level of review before it is presented on the air, the employee will qualify for exemption under section 13(b)(9). A reporter who is primarily engaged in the activities discussed above may qualify for exemption as a news editor.

23d05 Chief engineer licensed by the Federal Communications Commission.

Due to changes in FCC licensing requirements for commercial radio operators, a chief engineer who is otherwise exempt (*see* 29 CFR 793.9) and holds a commercial radio operator license issued by the FCC which is valid for AM, FM, or TV broadcasting work will now qualify for exemption under section 13(b)(9). The exemption now applies to *any* class of commercial radio operator unless the license carries an endorsement which does not authorize operation of AM, FM, or TV broadcast work.