

**875—215.4(91D) Exceptions.** The rules contained in 875—Chapters 215 to 220 shall not apply with respect to:

**215.4(1)** Any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesperson (except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in employee's workweek which the employee devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 percent of the employee's hours worked in the workweek are devoted to the activities).

**215.4(2)** Any employee employed by a retail or service establishment (except an establishment or employee engaged in laundering, cleaning, or repairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described and defined in 215.3(11) "e") if more than 50 percent of the establishment's annual dollar volume of sales of goods or services is made within the state in which the establishment is located, and the establishment is not in an enterprise described and defined in 215.3(11). A "retail or service establishment" shall mean an establishment 75 percent of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry.

**215.4(3)** Any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or nonprofit education conference center, if

- a. It does not operate for more than seven months in any calendar year, or
- b. During the preceding calendar year, its average receipts for any six months of such year were not more than  $33 \frac{1}{3}$  percent of its average receipts for the other six months of the year, except that the exemption provided does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture.

**215.4(4)** Any employee employed by an establishment which qualifies as an exempt retail establishment under 215.4(2) and is recognized as a retail establishment in the particular industry notwithstanding that the establishment makes or processes at the retail establishment the goods that it sells, provided that more than 85 percent of the establishment's annual dollar volume of sales of goods so made or processed is made within the state in which the establishment is located.

**215.4(5)** Any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacean, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any employee.

**215.4(6)** Any employee employed in agriculture:

- a. If the employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than 500 person-days of agricultural labor;
- b. If the employee is the parent, spouse, child, or other member of the employer's immediate family;
- c. If the employee:
  1. Is employed as a hand harvest laborer and is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment,
  2. Commutes daily from the employee's permanent residence to the farm on which the employee is employed, and
  3. Has been employed in agriculture less than 13 weeks during the preceding calendar year;
- d. If the employee (other than an employee described in 215.4(6) "c"):

1. Is 16 years of age or under and is employed as a hand harvest laborer, is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment,

2. Is employed on the same farm as the employee's parent or person standing in the place of the employee's parent, and

3. Is paid at the same piece rate as employees over age 16 are paid on the same farm; or

*e.* If the employee is principally engaged in the range production of livestock.

**215.4(7)** Any employee to the extent that the employee is exempted by regulations, order, or certificate of the Secretary of Labor issued under the federal Fair Labor Standards Act, 29 U.S.C. 214.

**215.4(8)** Any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than 4,000, having the major part of its circulation within the county where published or counties contiguous thereto.

**215.4(9)** Reserved.

**215.4(10)** Any switchboard operator employed by an independently owned public telephone company which has not more than 750 stations.

**215.4(11)** Reserved.

**215.4(12)** Any employee employed as a stevedore on a vessel other than an American vessel.

**215.4(13)** Reserved.

**215.4(14)** Any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves.

**215.4(15)** Any enterprise whose annual gross volume of sales made or business done (exclusive of excise taxes at the retail level which are separately stated) falls below the applicable amount so stated in 215.3(11) which initially required compliance. Future compliance shall be determined following each succeeding quarter with the gross volume of sales made or business done (exclusive of excise taxes at the retail level which are separately stated) from the most recent four quarters being totaled to determine an annual gross. The gross amount initially requiring compliance shall continue in effect.

SOURCE: 29 U.S.C. 213.