

Chapter 23 - NEWSPAPER AND OTHER COMMUNICATION EXEMPTIONS

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Chapter 23 - NEWSPAPER AND OTHER COMMUNICATION EXEMPTIONS**23a - NEWSPAPERS - SECTION 13(a)(8)****23a00 - General provisions.**

- (a) Sec 13(a) (8) provides an exemption from the MW and OT provisions of the 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 Sec 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 Sec 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 Sec 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 Sec 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 Sec 13(a)(8).

23a04 - Employees of a printer.

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

23a05 - Nonexempt work.

Except as provided by IB 786.250 (see FOH 23a06), the Sec 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 Act (including enterprise coverage) and not within the scope of some other exemption.

23a06 - Job printing.

Job printing pursuant to IB 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 Sec 13(a)(8). (See FOH 23a06.)

23a08 - Circulation.

The word “circulation” as used in Sec 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 Sec 3(s)(1) enterprise or if any of the sales work is individually covered. However, WH 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 Sec 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—SEC 13(d), FIRST PART**23b00 - General provisions.**

Sec 13(d), first part, exempts from the provisions of Secs 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 Sec 13(d) as under Sec 13(a)(8).

23b01 - Effect of nonexempt work.

- (a) As Sec 13(d) is a CL exemption as well as an MW and OT exemption, there can be no tolerance for nonexempt 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 Sec 13(d) exemption is defeated by the performance of nonexempt work. For example, if the duties of the minors consist wholly of exempt work and nonexempt work which is permitted by CL Reg 3, their employment would be permissible provided it complies with the conditions of that Reg. 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 Sec 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 Sec 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 Sec 13(d). The solicitation of newspaper subscriptions for delivery by other persons (newsboys) does not constitute work relating to the newsboy's delivery of newspapers to the consumer. Nevertheless, the possible application of the Reg 541.5 exemption should not be overlooked. The work may be permissible under CL Reg 3 provided it complies with the conditions of that Reg.

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¢ 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 Sec 13(d) exemption.

23c - SWITCHBOARD OPERATOR - SEC 13(a)(10)**23c00 - General provisions.**

Sec 13(a)(10) provides a MW and OT 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 Sec 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 Sec 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 Sec 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 nonexempt 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% of their working time in any workweek in nonexempt work. (See IB 786, Subpart C.)

23c03 - "Station" defined.

The term "station", as used in Sec 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 Sec 13(a)(10) exemption applies on a w/w basis.

23c07 - Telephone-answering and message relaying service.

The Sec 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 - SEC 13(b)(9)**23d00 - General provisions and IB 793.**

- (a) Sec 13(b)(9) provides an exemption from the OT 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) IB 793 contains the interpretations by the Adm of the scope and terms of this exemption.

23d01 - Population counts and standard metropolitan statistical areas (SMSA's).

- (a) The Office of Management and Budget (OMB) definitions of SMSA's, and their 1980 populations, are located in FOH Vol I following Reg 536. The 1980 census figures for the individual States are located in the AO's 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 w/w's beginning on or after 1/17/82 and the 1970 U.S. decennial census of population shall be used for all w/w's beginning prior to 1/17/82.
- (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 in FOH Vol I 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 Sec 13(b)(9), provided all

other requirements are met. Cases involving greater distances should be referred through channels to the RS.

23d03 - Cable TV systems.

Unless a particular cable television system is licensed as a television broadcasting station by the FCC, Sec 13(b)(9) will not apply. (See IB 793.16.)

23d04 - News Editor.

A news editor is defined in IB 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 Sec 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 FCC.

Due to changes in FCC licensing requirements for commercial radio operators, a chief engineer who is otherwise exempt (see IB 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 Sec 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.