

FLSA-342

October 26, 1983

This is in reply to your communication of September 28 enclosing a copy of a letter from Mr. ***, of ***. Mr.*** states that the *** in *** has contracted with an individual to employ prisoners to make brooms that will be shipped out-of-State. The prisoners are to be paid \$1.00 per hour. Mr. *** is concerned that this will create unfair competition for commercial broom shops since they have to pay wages well in excess of the Federal minimum wage.

The Fair Labor Standards Act (FLSA) is the Federal law of most general application concerning minimum wage and overtime pay. Where an employment relationship exists, employees engaged in covered work under FLSA must be paid a minimum wage of at least \$3.35 an hour and overtime premium pay for all hours worked in excess of 40 in a workweek, unless specifically exempt. The Act is discussed in more detail in the enclosed Handy Reference Guide, which you may wish to forward to your constituent.

Generally, a prison inmate who, while serving a sentence, is required to work by or who does work for the prison, within the confines of the institution, on prison farms, road-gangs, or other areas directly associated with the incarceration program, is not an employee within the meaning of FLSA. A different situation exists, however, where inmates are contracted out by an institution to a private company or individual. In such instances an employer-employee relationship is created between the private company or individual and the prisoners. This is true regardless of whether the work is performed within the confines of the prison or elsewhere. Such employees must be paid in accordance with the minimum wage and overtime pay provisions of FLSA.

In addition, your constituent asks if there is a Federal law that would prohibit the shipping of the brooms produced by the prison inmates in interstate commerce. In this regard, it should be noted that Sections 12(a) and 15(a)(1) of FLSA contain certain prohibitions against putting into interstate or foreign commerce any goods ineligible for shipment (commonly called "hot goods"), the production of which the child labor, minimum wage or overtime pay standards of FLSA were not observed. However, we are unable to determine from the available information if these sections would apply to the shipment of brooms produced by the inmates.

Since FLSA may have some application to the situation described in *** correspondence, we are forwarding a copy of his letter to our Regional Office in San Francisco, California, for further action. That office is responsible for the enforcement of FLSA in the State of *** and has been advised to notify your constituent of their findings.

Sincerely,

William M. Otter
Administrator

Enclosures