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Approved: Fernando Chardon
Secretary of State
By: Gloria I. Silva de Díaz
Assistant Secretary of State

Commonwealth of Puerto Rico
MINIMUM WAGE BOARD
414 Barbosa Avenue
Hato Rey, P. R.

MANDATORY DECREE NO. 42

FOURTH REVISION (1968)

APPLICABLE TO THE

RETAIL TRADE INDUSTRY

Totally Approved

Article I - Definition of the Industry 1/

This mandatory decree is applicable to all the employees in The Retail Trade Industry as defined below:

The Retail Trade Industry comprises, but not as a limitation:

Every act, process, operation, work or service necessary, incidental or related to the sale or transfer to consumers, for or without profit, of any kind of merchandise or goods, carried out at any establishment or place.

It also comprises the activity carried out in the operation, by force account, of a restaurant, bar, or soda fountain, within an establishment chiefly engaged in retail trade.

In case of a mixed establishment which in addition to engaging in retail trade, engages in any other activity (other than restaurants, bars or soda fountains), it shall be understood that the worker or employee will be covered by the mandatory decree applicable to the activity he carries out exclusively or chiefly, or to the one he devotes more than half of his working time.

The activities covered by Mandatory Decree Number 70 applicable to the Miscellaneous Activities Industry - First Revision (1967); Number 46 applicable to the Hotel Industry - Third Revision (1966) and Number 47 applicable to the Restaurant, Bar and Soda Fountain Industry - Fourth Revision (1966) are excluded from this definition. It does not include, neither, employees working as travelling-salesmen.

Article II - Minimum Wage

Every employer shall pay his employees a minimum wage per hour not lower than that provided hereinafter for the different classifications and zones of the industry as defined:

Classifications	Minimum Wage Per Hour
1- Motor Vehicles and Agricultural and Industrial Machinery	
A- Enterprises with a total volume of annual gross income of less than $1,000,000.00	
All workers	$ 1.40
B- Enterprises with a total volume of annual gross income of $1,000,000.00 or more	
All workers	1.60

1/ See footnote in page 13

Classifications	Minimum Wage Per Hour
2- Supermarkets	
A- Enterprises with a total volume of annual gross income of less than $1,000,000.00	
Butchers	$ 1.40
Messengers, clean-up men and/or baggers	1.20
Al other workers	1.30
B- Enterprises with a total volume of annual gross income of $1,000,000.00 or more	
Butchers	1.60
Messengers, clean-up men and/or baggers	1.35
All other workers	1.45
3- Grocery Stores	
A- Enterprises with a total volume of annual gross income of less than $250,000.00	
Messengers and/or clean-up men	0.70
All other workers	0.75
B- Enterprises with a total volume of annual gross income from $250,000.00 but less than $500,000.00	
Messengers and/or clean-up men	1.00
All other workers	1.05
C- Enterprises with a total volume of annual gross income from $500,000.00 but less than $1,000,000.00	
Messengers and/or clean-up men	1.15
All other workers	1.20
D- Enterprises with a total volume of annual gross income of $1,000,000.00 or more	
Messengers and/or clean-up men	1.30
All other workers	1.40
4- Gasoline Service Stations	
All workers	0.78
5- Building Materials and Hardware Stores	
A- Enterprises with a total volume of annual gross income of less than $250,000.00	
All workers	1.10
B- Enterprises with a total volume of annual gross income from $250,000.00 but less than $500,000.00	
All workers	1.20

Classifications	Minimum Wage Per Hour
C- Enterprises with a total volume of annual gross income from $500,000.00 but less than $1,000,000.00	
All workers	$ 1.40
D- Enterprises with a total volume of annual gross income of $1,000,000.00 or more	
All workers	1.50
6- Department Stores, Variety or Discount Stores, General Dry Goods Stores and Apparel and Accesories Stores	
A- Enterprises with a total volume of annual gross income of less than $250,000.00	
All workers	1.00
B- Enterprises with a total volume of annual gross income from $250,000.00 but less than $500,000.00	
All workers	1.25
C- Enterprises with a total volume of annual gross income from $500,000.00 but less than $1,000,000.00	
All workers	1.40
D- Enterprises with a total volume of annual gross income of $1,000,000.00 or more	
All workers	1.60
7- Furniture, Home Furnishings, and Household Appliances Stores	
A- Enterprises with a total volume of annual gross income of less than $250,000.00	
All workers	1.05
B- Enterprises with a total volume of annual gross income from $250,000.00 but less than $500,000.00	
All workers	1.15
C- Enterprises with a total volume of annual gross income from $500,000.00 but less than $1,000,000.00	
All workers	1.30
D- Enterprises with a total volume of annual gross income of $1,000,000.00 or more	
All workers	1.50
8- Drugstores	
A- Enterprises with a total volume of annual gross income of less than $250,000.00	
All workers	1.00
B- Enterprises with a total volume of annual gross income from $250,000.00 but less than $500,000.00	
All workers	1.15

Classifications	Minimum Wage Per Hour
C- Enterprises with a total volume of annual gross income from $500,000.00 but less than $1,000,000.00	
All workers	$ 1.25
D- Enterprises with a total volume of annual gross income of $1,000,000.00 or more	
All workers	1.40
9- Other Retail Enterprises	
A- Enterprises with a total volume of annual gross income of less than $250,000.00	
All workers	1.10
B- Enterprises with a total volume of annual gross income from $250,000.00 but less than $500,000.00	
All workers	1.20
C- Enterprises with a total volume of annual gross income from $500,000.00 but less than $1,000,000.00	
All workers	1.25
D- Enterprises with a total volume of annual gross income of $1,000,000.00 or more	
All workers	1.40

Article III -- Definitions of the Classifications of the Industry 1/

The different classifications of the industry shall have the meanings provided for hereinafter:

1- Motor Vehicles and Agricultural and Industrial Machinery: This classification shall include, but without limitation, every enterprise engaged in the retailing of new or used motor vehicles and agricultural and industrial machinery. It shall also include the retailing of parts and accessories, as well as the repair work, when these activities are incidental to the main business which is the sale of motor vehicles and agricultural and industrial machinery.

2- Supermarkets: This classification shall comprise every enterprise primarily engaged in the retailing of foodstuffs, whether operating as chain or independent stores under a self-service system and having 3,000 square feet or more of selling area visible to the public. Branches of these establishments shall also be included even though their respective selling areas occupy less than 3,000 square feet.

1/ See footnote in page 13.

3- Grocery Stores: This classification shall comprise every enterprise primarily engaged in retailing foodstuffs. Supermarkets and their branches, as defined in classification No. 2 of this Article III, shall be excluded.

4- Gasoline Service Stations: This classification shall comprise every establishment primarily engaged in the retailing of gasoline.

5- Building Materials and Hardware Stores: This classification shall comprise every establishment engaged in retailing building materials and hardware such as cement, lumber, rods, electric or plumbing fixtures, paints, tools or miscellaneous household wares.

6- Department Stores, Variety or Discount Stores, General Dry Goods Stores and Apparel and Accesories Stores: This classification shall comprise every enterprise engaged in the retailing of such articles as clothes and male, female and children's accesories, or other articles related to personal use, and general dry goods. Also comprised in this classification shall be those enterprises known as department stores and variety or discount stores, which in addition to the above-mentioned articles are engaged in the retailing of articles such as furniture and household and office goods, automobile goods, hardware goods, toys, jewelry, photographic goods, household goods, sports goods, goods for gardering, china and glassware, and any other goods of a similar nature. Also included are the concessions operating within the establishment in the classification.

7- Furniture, Home Furnishings, and Household Appliances Stores: This classification shall comprise every enterprise primarily engaged in the retailing of furniture, electric appliances, lamps, and other home furnishings.

8- Drugstores: This classification shall comprise every enterprise primarily engaged in the retailing of the articles defined and included in the term "Pharmacy" as defined in Act No. 282 approved May 15, 1945, as amended, known as the "Pharmacy Act of Puerto Rico", which says:

> "The term "pharmacy", when not otherwise limited in this Act, shall mean an establishment registered and authorized by the Board of Pharmacy, in which are prepared, conserved, sold, and placed in containers chemical products, drugs, pharmaceutical products, pharmaceutical or propietary specialties, prescriptions, medicines, and poisons at retail, and which may also deal in such other articles a proper object of commerce as may be customarily sold in the pharmacies of Puerto Rico...";

as long as the enterprise complies with the regulations of the Department

of Health as to the necessary equipment for selling and preparing medicinal products under the direct or indirect supervision of a graduate pharmacist authorized for it under the laws of Puerto Rico.

9- Other Retail Enterprise: This classification shall comprise all those enterprises covered by the definition, engaged in retail trade and not included within the preceding classifications, such as jewelry stores, flower shops, stores selling automobile parts and accesories, book shops, stores selling goods and appliances for offices, restaurants and hotels.

Article IV - Definition of Occupations 1/

A- Messenger and/or clean-up man - shall be every employee who works exclusively or chiefly in the distribution of goods to customers outside the establishments, on foot or on bicycle, or in the cleaning of the premises. In case of establishments engaged in the sale of foodstuffs, the messengers who distribute goods to customers in motor vehicles shall be included in this definition, provided the driver is responsible for the goods and not the messenger.

B- Bagger - shall be that employee who places the articles bought, after they are paid for, in bags or boxes or carries them to the purchaser's vehicle.

C- Butcher, Meat Breaker or Meat Cutter - shall be every employee in charge of cutting, classifying, and selling the fresh or frozen meat sold at the establishment. It shall only include the person who is skilled in the technique of breaking up all kinds of meat and who cuts and classifies it to be packed or displayed, and who, in some cases, may even sell it directly to the customer. However, said classification shall not include the employee whose job is limited to weighing, packing, labeling, cutting or selling the meat previously broken up and classified.

Article V - Definitions and Rules for Computing the Total Volume of Annual Gross Income of the Enterprises in the Industry 1/

A- Definition of Terms

1) Enterprise - Shall include related activities performed either through unified operation or common control for a common business purpose, by any person or persons in one or more establishments or by one or more corporate or other organizational units.

2) Enterprises with a Total Volume of Annual Gross Income of Less than $250,000.00 - Shall include those enterprises in the industry with a total volume of annual gross income from all its establishments of less than $250,000.00 during a period of 12 consecutive months.

3) Enterprises with a Total Volume of Annual Gross Income from $250,000.00 but Less than $500,000.00 - Shall include those enterprises in the industry with a total volume of annual gross income from all its establishments from $250,000.00 but less than $500,000.00 during a period of 12 consecutive months.

4) Enterprises with a Total Volume of Annual Gross Income from $500,000.00 but Less than $1,000,000.00 - Shall include those enterprises in the industry with a total volume of annual gross income from all its establishments from $500,000.00 but less than $1,000,000.00 during a period of 12 consecutive months.

5) Enterprises with a Total Volume of Annual Gross Income of Less than $1,000,000.00 - Shall include those enterprises in the industry with a total volume of annual gross income from all its establishments of less than $1,000,000.00 during a period of 12 consecutive months.

6) Enterprises with a Total Volume of Annual Gross Income of $1,000,000.00 or More - Shall include those enterprises in the industry with a total volume of annual gross income from all its establishments of $1,000,000.00 or more during a period of 12 consecutive months.

1/ See footnote in page 13.

B- Method of Computing Total Volume of Annual Gross Income

In order to compute the total volume of annual gross income of an enterprise and to determine the minimum wage rates to be paid in the different levels of annual gross income established for all the classifications of the industry, except "Gasoline Service Stations" as these are defined in Article III, the most recent available information shall be used according to the methods described below:

Method 1 - To determine which enterprises will be immediately covered by the different classifications of the industry for which minimum wages have been fixed based on volume of annual gross income.

(A) Any enterprise which on the date this mandatory decree becomes effective has had in the respective classifications a total volume of annual gross income of:

(1) Less than $250,000.00

(2) From $250,000.00 but less than $500,000.00;

(3) From $500,000.00 but less than $1,000,000.00;

(4) $1,000,000.00 or more;

(5) Less than $1,000,000.00,

in its current accounting year, shall be considered as included in the classification corresponding to its activity and will be bound to pay its employees the minimum wages established for all the workers or for the different occupational groups of the respective classification, accordingly.

(B) Any enterprise which on the date this mandatory decree becomes effective has not reached in the respective classifications a total volume of annual gross income of:

(1) From $250,000.00 but less than $500,000.00;

(2) From $500,000.00 but less than $1,000,000.00;

(3) $1,000,000.00 or more;

(4) Less than $1,000,000.00;

in its current accounting year, but which has exceeded the levels of total volume of annual gross income at the

termination of its last accounting year, will be bound to pay its employees the minimum wages established for all the workers or for the different occupational groups of the respective classification, accordingly.

Method 2 - To compute the volume or income when the previous Method is not applicable. When it is impossible to determine the volume of income which the enterprise will have in its current accounting year, after doing the analysis indicated in Method 1, the enterprise may use the following methods:

In case the enterprise operates on a calendar year, the same shall be divided into the following calendar quarters: January 1 to March 31; April 1 to June 30; July 1 to September 30; and October 1 to December 31. At the beginning of each calendar quarter, the income corresponding to the 12 month period which immediately precedes the current calendar quarter is computed and in this way the employer can know if the enterprise reached or exceeded the levels of annual gross income which are indicated in Method 1 (A) and can comply with the provisions of the decree.

If the enterprise operates on a fiscal year, it shall use the quarters method applying it to the quarter comprised in its fiscal year. To that effect it shall compute at the beginning of each quarter the income corresponding to the 12 month period which immediately precedes the current quarter. Once this method is adopted, the same basis shall be used in subsequent calculations.

Method 3 - To compute the volume of income of new enterprises.

In enterprises which are to start operating, the employer will calculate beforehand the volume of income of the same during its first year of operations and will pay the wages of the corresponding classification. In cases where this is not possible, to determine the corresponding level of gross income, the total volume of gross income of the first quarter shall be taken as representative of the total volume of gross income for

the year (multiplying this income by four) for the payment of minimum wages for the next quarter.

That is to say, the level of gross income for the following quarters will be computed on the basis of the total volume of gross income of the quarters preceding them. For example, if the employer in a new enterprise has a gross income of $62,500.00 during his first quarter of operations, this total will be multiplied by four. The result will be a gross annual income of $250,000.00, in which case he shall pay the wages corresponding to the applicable level of annual gross income.

Those new enterprises which are unable to determine beforehand their volume of income during the year, shall be under obligation to pay during the first quarter year period in which they have been operating at least the wages established for the lowest income level of their respective classification. Once the first quarter year period is over, the income of said quarter shall be taken as representative of the total volume of annual gross income for the purposes of determining the wages rates to be paid in the following and ensuring quarter year periods.

After the new business has been in operation for a full year, the analysis shall be made by using the rule described in the previous methods.

C- General Provisions

The term "related activities" shall mean those activities which are the same, similar or necessary to the normal operation of the enterprise. Nevertheless, those unrelated activities which are minimum or incidental to the operation of the business and which are performed on the same premise and by the same employees shall be considered as part of the enterprise.

When two or more persons or organizations perform their "related activities" through unified operation or common control for a common business purpose, these activities shall be considered

as activities performed by a single enterprise. The term "unified operation" shall mean to combine, unite or organize related activities so that business operations are performed by a single organization and with a common business purpose. It may include enterprises with more than one establishment but operated as a single unit and for a common business purpose.

"Common control" shall mean the sharing of control and it is not limited to sole or complete control by one person or corporation. "Common control" shall exist where activities performed are controlled by one or more persons, corporations or other organizational units acting together. It is the purpose of this section to indicate, that those enterprises which are controlled and operated by independent employers who by an agreement or covenant with other enterprises of the industry may join to perform certain related activities such as purchasing, warehousing, advertising, price standardizing, and similar activities, shall be regarded as individual enterprises and not as a single enterprise. These enterprises may operate under the same trade name, use the same equipment, sell the same products, and offer the same services.

Article VI - Vacation and Sick Leave 2/

A- Vacation

Every employee shall be entitled to vacation leave with full pay to be made effective, when he begins to enjoy the same, at the rate of one and one-fourth (1 1/4) working day for each month during which he has worked at least one hundred and twenty (120) hours. Provided, also, that every employee shall be entitled to vacation leave with full pay to be made effective when he begins to enjoy same, at the rate of three-fourths (3/4) working day for each month during which he has worked less than one hundred and twenty (120) hours but not less than eighty (80) hours. Any employee working less than eighty (80) hours in any month will not accrue any vacation leave for that month.

Such vacation leave shall be taken consecutively by the employee and shall be granted annually in such a manner as not to interfere with the normal operation of the business, to which end the employer shall establish the proper schedule. The employee may not ask for vacation until he has accumulated same

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2/ See Footnote in page 13.

for one year. Through written agreement between employer and employee, vacation leave may accumulate for more than one year but never for more than two years. In the event the employee ceases in his work, the employer shall pay him the total thus far accumulated, even if for less than one year. If the vacation leave exceeds the maximum of two years herein authorized, the employer shall also pay him twice (2) the corresponding wages for the period in excess of the said two years. If the wage has not been stipulated per days or longer periods, the wage corresponding to each day of vacation shall be computed by multiplying by eight (8) the highest regular rate per hour received by the employee during the month to which the vacation corresponds. Any contract whereby the employee waives, for money or other consideration, his right to actually take his vacation leave shall be unlawful and void, unless a special permit is obtained from the Secretary of Labor or any duly authorized agent to allow any employee to waive for money the enjoyment of his vacation leave. Any employer who fails to grant any of his employees the vacation he is entitled to after the same has been accrued for more than two years, shall grant him the total thus far accumulated and pay him twice (2) the salary corresponding to the period in excess of the said two years.

B- Sick Leave

Every employee shall be entitled to sick leave with full pay at the rate of one and one-fourth (1 1/4) working day for each month during which he has worked at least one hundred and twenty (120) hours. Provided, also, that every employee shall be entitled to sick leave with full pay at the rate of three-fourths (3/4) working day for each month during which he has worked less than one hundred and twenty (120) hours but not less than eighty (80) hours. Any employee working less than eighty (80) hours in any month will not accrue any sick leave for that month. Sick leave not used by the employee during the course of the year shall accrue during successive years up to a maximum of thirty (30) days. Except in case of "vis major", the employee shall notify his employer of his sickness the same day he is absent. If the wage has not been stipulated by day or longer periods, the pay for each day of sick leave

shall be computed by multiplying by eight (8) the regular rate per hour which the employee was earning at the time he was taken sick. In case of illness lasting over two days, the employee must at the request of the employer accredit the same with a medical certificate in order to be entitled to enjoy the leave herein provided.

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1/ With the exception of Article VI hereinafter mentioned Article I to V of the Decree were approved on Tuesday, December 10, 1968 and went into effect on Monday, December 30, 1968, that is, fifteen (15) days after the Notice of its Approval was published in the newspaper El Mundo on December 14, 1968. Nevertheless, the minimum wages established in Article II of this Decree are retroactive to Thursday, November 28, 1968, as specifically provided for in Section 14 of the Minimum Wage Act of Puerto Rico.

2/ Article VI - Vacation and Sick Leave of this Decree - was approved by the Minimum Wage Board of Puerto Rico on Wednesday, April 2, 1969, and it shall become effective on Wednesday, April 23, 1969, that is, fifteen (15) days after the Notice of its Approval is published in the newspaper El Mundo on Monday, April 7, 1969. Nevertheless, the provisions established in Article VI shall be retroactive to Thursday, February 27, 1969, by express provision of Section 14 of the Minimum Wage Act of Puerto Rico.

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Note from the Minimum Wage Board:

By express provision of Section 40 (b) of Act No. 96 of June 26, 1956, as amended (Minimum Wage Act of Puerto Rico) all provisions of Mandatory Decree No. 8, amended, applicable to the Retail Trade Industry in effect since August 15, 1955, other than those relative to minimum wages, vacation and sick leave, remain in force.

The principal provisions of the above-mentioned decree are the following:

ARTICLE V - GUARANTEE OF MINIMUM WEEKLY COMPENSATION

A. Every employee working more than twenty (20) hours a week, but less than forty (40), even though he is available for work, shall, except in case of "vis major", be entitled to a weekly salary not less than that resulting by multiplying by 40 the regular rate per hour he is then drawing.

B. Every employee working twenty (20) hours or less a week, even though he is available for work, shall, except in cases of "vis major", be entitled to a weekly salary not less than that resulting by multiplying the working hours by one and one-half (1 1/2) the regular rate per hour he is then drawing.

C. For the purposes of this Article, it shall be considered that the employee is not available for work only when he does not appear in person at the work, refuses to work, or is so ill that he is unable to carry out his habitual tasks.

ARTICLE VI - MAXIMUM WORKING PERIODS

No employer shall employ any worker whomsoever in the retail trade business for more than eight (8) hours in any period of twenty-four (24) consecutive hours, nor for more than forty-eight (48) hours in any week, unless he pays said worker for his work in excess of the said eight (8) hours of forty-eight (48) hours at the rate of at least twice the regular wage rate he is then drawing.

Every employer shall be under the obligation to comply with Regulation No. 7 approved on August 23, 1946 by the Minimum Wage Board, which requires and lists the records to be kept by the employer in compliance with provisions on Section 5, paragraph 4, of the Minimum Wage Act.

ARTICLE VIII - WORKING CONDITIONS

A. Weekly Rest Day. - Every employee shall be entitled to a day of rest for every six (6) or part of each one of six (6) consecutive days he has worked. If the employer employs him during said day of rest, he shall be under obligation to pay said employee for the work done on that day at the rate of at least twice the regular wage rate he is then drawing.

D. Holidays Not Worked - The holidays and half holidays declared by the Legislative Assembly and during which the establishments are compelled to close (Sundays excepted) shall be paid to all those employees who regularly work four or more days a week at the hourly wage rate they receive for the hours they regularly work, provided that these days shall be considered as working days for the purposes of Article VI - Fourth Revision (1968), which deals with vacation and sick leave.

In order to aid in the comprehension and interpretation of the decree, the coverage given by the Board to the definition of the industry upon its approval is transcribed below. Said coverage, as well as the definition, served as a basis to frame the recommendations of the Minimum Wage Committee.

Coverage of the Definition

The preceding definition is the same as that in Mandatory Decree No. 42 - Third Revision (1965) applicable to the Retail Trade Industry at present in force. In order to facilitate the interpretation of mandatory decree, the Board has adopted the rule of avoiding, as far as possible, the application of more than one minimum wage mandatory decree to an establishment.

Following this rule, the definition now approved, as the previous one, includes the activities carried on by employers who operate a restaurant, bar or soda fountain by force account within an establishment engaged principally in the retail sales business. However, the activities of employers engaged exclusively or principally in the operation of restaurants, bars or soda fountains or the lessees, concessionaries or cessionaries operating this type of business within other establishments engaged in retail trade or excluded from this definition and covered by Mandatory Decree No. 47 - Fourth Revision (1966) applicable to the Restaurant, Bar and Soda Fountain Industry shall apply to them.

On approving the definition that appears in the aforementioned mandatory decree, and excluding from the definition those activities specifically mentioned, the Board defined the coverage of the definition in the following manner:

"The establisments expressly excluded from the application of the mandatory decree which the Board approves for the Restaurant, Bar and Soda Fountain Industry are:

1. Establisments primarily engaged in activities covered by another mandatory decree approved by the Board and which also operate by forceaccount a restaurant, cafeteria or soda fountain in the same establisment in which they carry out their principal activity. The expression "by force account" means that the restaurant, bar or soda fountain operated by the same employer who carries on the principal activity without there being a lessee, concessionary or cessionary, in which case the person operating it would be covered by the mandatory decree applicable to that industry.

As in the definition of Mandatory Decree No. 42 - Third Revision (1965), it is the intention of the Board on approving this definition that employees working in wholesaling within an establishment engaged principally in retail selling shall receive the same treatment and shall be covered by the same provisions as other employees working in any secondary activity within a business engaged principally in retail sales. The establisments engaged principally in retail sales which are also engaged in wholesaling shall be covered by the decree approved for the retail trade industry, notwithstanding the number of employees which the business uses in wholesaling. However, it should be clearly understood that employees working exclusively or principally in, or which devote more than half of their time to, wholesaling in an establisment engaged principally in retail selling as covered by the mandatory decree applicable to the wholesaling and Warehousing Industry.

It is the intention of the Board upon the approval of the present definition that all those activities which have been considered up to now as covered by the mandatory decree applicable to the Retail Trade Industry continue to be considered as such. For example, the sale of automobiles or machinery when sold to the ultimate consumer; the sale of fertilizer to farmers who use it in the operation of their own farms; the sale of equipment and machinery to hospitals and hotels and the sale of office equipment to commercial or industrial establisments that use it in the normal course of their operation and not for resale, should be considered as included in the definition of retail trade.

Also included in this definition now approved are those business covered by the 1961 and 1966 amendments to the Fair Labor Standards Act of 1938.

As shown by the definition transcribed above, included in the same is every act, process, operation, work or service necessary, incidental or related to the sale or transfer to consumers, for or without profit, of any kind of merchandise or goods, carried out at any establishment or place.

It is pointed out, by way of an example, that the transportation by the retailer who has sold the merchandise, as well as the repair, conservation or maintenance work performed by a retailer in the establishment which he uses for retail selling, are activities considered necessary or related to the retail trade industry and should be considered included within the Retail Trade Industry as defined herein. The transportation, as well as the repair, conservation or maintenance work must be carried on by force account, that is to say, by employees of the same retail trade employer and under his immediate supervision.

When the retailer uses in the transportation of his merchandise the services of another person or enterprise engaged in the transportation of cargo, then the employees engaged in this transportation will not be employees of the retailer but of the particular person or enterprise and would be covered, as to wages, by Mandatory Decree No. 38-Fourth Revision (1967) applicable to the Transportation Industry.

Included in this definition are repair services performed by employers in the retail trade industry, if the services are necessary to the commercial activities and are not offered to the public in general. Thus, when an employer operates jointly with the principal activities of his retail business a repair shop where articles to be sold to customers are prepared, or where sold articles are repaired in fulfilment of the normal guarantee to customers, constituting these activities an incident to the retail trade business, the repair shop shall be considered included in the definition now approved unless it is engaged in the repair of all types of articles and any person who has not bought his article in said establisment can obtain repair service in its shop, which will evidence that it offers its services to the general public. However, the fact that in said shop at one time or another articles are repaired for a person who is not a regular customer of the establishment, or that being so, the repair is not in compliance to a guarantee, this sporadic or isolated repair, by itself, should not be a basis for concluding that the repair shop of the businessman is open to the general public.

It should also be pointed out that if the repair, conservation or maintenance of fixtures and buildings used for retail selling is performed by an independent contractor (not by force account), the employees used in those activities will be covered by Mandatory Decree No. 44 - Fourth Revision (1967) applicable to the Construction Industry. Normally the employees used by a contractor in construction work are his own employees and are covered by the construction decree.

Mandatory Decree No. 8 (amended) excluded travelling-salesmen from its wage and hour provisions, but extended benefits to travelling-salesmen with respect to day of rest, vacation, sick leave and holidays with pay. The mandatory decree in force for this industry also excludes from its coverage travelling-salesmen; and the same exclusion is made in the definition now approved.

The exclusion of travelling-salesmen from the definition does not imply that because of it they loose the benefits that had been extended under Mandatory Decree No. 8 (amended), inasmuch as the mandatory decree now in force as well as the new one approved only establish minimum wage rates. The benefits that these employees enjoyed at the time when Act 96 of June 26 of 1956 (Minimum Wage Act of Puerto Rico) was approved continued and continue subsisting for said employees by express provision of Section 40 (a) and (b) of said Statute.

It should be pointed out that by "travelling salesmen" it is meant those employees which carry out, on behalf of their employer, selling transactions directly with the consumers, whether they intervene or not personally in the distribution or delivery of the articles sold. Usually these employees do not perform their work at the main office or return daily to it; they are not subject to direct supervision once they go out to sell; they use their discretion as to the amount of work and time to be spent in the selling activities; and the very nature of the work makes it impossible to determine the real hours worked during a working day.

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