

Fact Sheet #80: The Prohibition against Shipment of “Hot Goods” Under the Fair Labor Standards Act

This Fact Sheet provides general information about the “hot goods” provisions of the Fair Labor Standards Act (FLSA). Under the “hot goods” provisions, the Department of Labor can seek a court order to prevent the interstate shipment of goods that were produced in violation of the minimum wage, overtime, or child labor provisions of the FLSA. The order can apply not only to the employer who produced the goods but to anyone in possession of the goods.

Department of Labor Investigation

Most employers are subject to the FLSA. Covered employers are required to pay non-exempt employees at least the minimum wage, and overtime for hours worked beyond 40 in a work week, keep certain basic payroll and employment records, and limit the working hours and types of jobs for underage youth.

Section 11(a) of the FLSA authorizes representatives of the Secretary of Labor to investigate and gather data concerning wages, hours, and other employment practices; enter and inspect an employer’s premises; review records; and question employees to determine whether any person has violated any provision of the FLSA. The Secretary of Labor has delegated this responsibility to the Wage and Hour Division (WHD). See *Fact Sheet #44: Visits to Employers* for general information about the investigation process.

If an investigation uncovers evidence that goods were produced in violation of the FLSA, the WHD investigator will ask to meet with the employer. The investigator will explain the violations and advise the employer of steps that can be taken to be in compliance with the FLSA. At that time, the investigator may advise the employer that the FLSA prohibits the interstate shipment of any goods that were produced in violation of the FLSA and may request that the employer voluntarily refrain from shipment of those goods until the investigation has been concluded. Employers may be represented by their accountants or attorneys at any point during this investigation process. When the investigator has advised the employer of his/her findings, or at any time during the investigation, the employer or representative may present additional facts for consideration.

The WHD typically seeks to resolve the issue of compliance with the employer informally. As part of a resolution, WHD may ask the employer or any other entity that receives or ships the goods, to voluntarily refrain from shipping the “hot goods” until legally required wages have been paid and until other remedies or agreements are in place that the Department deems necessary to ensure future compliance with the law.

The “Hot Goods” Provisions

The “hot goods” provisions are found in Sections 15(a)(1) and 12(a) of the FLSA. These provisions generally make it illegal to ship goods in interstate commerce that were produced in violation of the minimum wage or overtime requirements of the FLSA or that were produced in or about an establishment where a child labor violation occurred in the past 30 days.

- The “goods” covered by the “hot goods” provision can include manufactured goods, agricultural goods or any other product sold or shipped in interstate commerce.

- The FLSA provides that the Department of Labor may request an order in Federal District Court preventing the shipment of “hot goods”. If an employer does not voluntarily agree to withhold goods from shipment pending resolution of an investigation, the Department may file a civil action to prevent shipment of the affected goods but only a court has the authority to issue an order prohibiting shipment.
- To obtain a court order preventing shipment of “hot goods” due to a minimum wage or overtime violation, the Department of Labor must show, at least, that the wage violations took place and that the affected workers were employed within 90 days prior to the removal of the goods from the establishment by the employer.
- To obtain a court order preventing the shipment of hot goods due to a child labor violation, the Department of Labor must show that a child labor violation took place and that it occurred within 30 days prior to the removal of the goods from the establishment in which the violation took place by the employer.
- A court order preventing the shipment of “hot goods” generally applies to employers, but can encompass all persons or firms that may ship the goods, including manufacturers and retailers, unless a statutory exception applies.
- The Department may notify anyone who may receive or purchase the “hot goods” that the Department believes based on its investigation, that goods were produced in violation of the FLSA.
- For minimum wage and overtime violations, a manufacturer or retailer, which may be under no legal obligation to pay back wages, may *choose* to pay the back wages owed by the employer to achieve compliance and allow shipment of the goods.

Good Faith Exception

The “hot goods” provisions *do not* apply to a “good faith” purchaser who acquires the goods for value, in good faith and in reliance on written assurance from the producer that the goods were produced in compliance with the FLSA.

- A purchaser who completes a transaction for goods after receiving notice that the goods were not produced in compliance with the FLSA generally will not qualify for the “good faith” exception.
- Manufacturers (or retailers) which own the goods at the time the violations of the minimum wage or overtime provisions take place *do not qualify* for this “good faith” exception. When retailers do not own the goods at the time of production they generally may qualify for the exception if they meet all of the “good faith” factors described above.
- If a purchaser knows that its supplier has sold “hot goods” in the past and does nothing to assure that the goods it receives are not “hot goods,” it may not be entitled to the “good faith” exception.

Ultimate Consumers

When “hot goods” are on a retailer’s shelves and/or in the possession of the “ultimate consumer,” they are no longer in the flow of commerce. Ordinarily, such goods can be sold legally.

Where to Obtain Additional Information

For additional information, visit our Wage-Hour Website: <http://www.wagehour.dol.gov> and/or call our Wage-Hour toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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