



Electronic Dispatch

Labor and Employment Law Information Memo

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RECENT LEGISLATION LIMITS THE SCOPE OF THE MOTOR CARRIER EXEMPTION UNDER THE FAIR LABOR STANDARDS ACT

The Fair Labor Standards Act (“FLSA”) requires employers to pay all non-exempt employees an overtime rate of one and one-half times their regular rate of pay for hours worked in excess of 40 in a work week. One of the exemptions from this overtime requirement is commonly referred to as the “motor carrier exemption.” The motor carrier exemption provides that an employer is not required to pay an overtime rate to any employee “with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service” under the Motor Carrier Act.

On August 10, 2005, new federal transportation legislation was enacted that amends some of the definitions contained in the Motor Carrier Act. Because the FLSA’s motor carrier exemption expressly refers to the provisions of the Motor Carrier Act, the enactment of this new legislation has had the apparently unintended consequence of limiting the scope of the motor carrier exemption, which makes more employees subject to the overtime requirements of the FLSA.

This information memo explains how the new legislation has changed certain key definitions contained in the Motor Carrier Act, and how these changes limit the FLSA’s motor carrier exemption.

The Provisions Of The Motor Carrier Act Prior To August 10, 2005

Under the Motor Carrier Act, the Secretary of Transportation has the authority to establish qualifications and maximum hours of service for employees of “motor carriers” and “motor private carriers” who drive vehicles in interstate commerce. Prior to August 10, 2005, the term “motor carrier” was defined as “a person providing **motor vehicle** transportation for compensation.” The term “motor private carrier” was defined as “a person, other than a motor carrier, transporting property by **motor vehicle**” when (1) the transportation occurs in interstate commerce; (2) the person is the owner, lessee, or bailee of the property being transported; and (3) the property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise.

The term “motor vehicle” is defined in the Motor Carrier Act as “a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway in transportation.”

Accordingly, prior to August 10, 2005, the FLSA’s motor carrier exemption applied to all employees who drove a motor vehicle in interstate commerce, regardless of the size of the motor vehicle or the number of passengers transported in the motor vehicle.

The New Legislation

The new federal transportation legislation enacted on August 10, 2005, the Safe Accountable, Flexible, Efficient Transportation Equity Act (“SAFETEA”), changed the definitions of “motor carrier” and “motor private carrier” by inserting the word “commercial” before “motor vehicle” in each definition. Therefore, the current definition of “motor carrier” is “a person providing **commercial motor vehicle** transportation for compensation.” The current definition of “motor private carrier” is “a person, other than a motor carrier, transporting property by **commercial motor vehicle**” when (1) the transportation occurs in interstate commerce; (2) the person is the owner, lessee, or bailee of the property being transported; and (3) the property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise.



The term “commercial motor vehicle” is defined as “a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle (A) has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater; (B) is designed or used to transport more than 8 passengers (including the driver) for compensation; (C) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or (D) is used in transporting material found by the Secretary of Transportation to be hazardous.”

Accordingly, due to the August 10, 2005 amendments to the Motor Carrier Act definitions, the FLSA’s motor carrier exemption now applies only to employees who drive **commercial** motor vehicles in interstate commerce. Several types of employees who were exempt under the motor carrier exemption prior to August 10, 2005 will now be subject to the FLSA’s overtime requirements. For example, employees who transport non-hazardous goods using light trucks and tractor-trailers (weighing 10,000 pounds or less) in interstate commerce were exempt under the motor carrier exemption prior to August 10, 2005. These employees are now non-exempt, because they do not drive **commercial** motor vehicles.

Based on the legislative history of SAFETEA, it does not appear that the change in the Motor Carrier Act definitions was intended to limit the scope of the FLSA’s motor carrier exemption. It appears that the change was intended only to ease the regulatory burden on certain employers in the transportation industry. Because this limitation on the scope of the FLSA’s motor carrier exemption appears to have been an unintended consequence, rather than a purpose, of SAFETEA, it is possible that Congress will pass future legislation to restore the status quo. However, until that happens, drivers of motor vehicles that do not qualify as “commercial” motor vehicles should be paid one and one-half times their regular rate of pay for hours worked in excess of 40 in a work week.

If you have any questions about the FLSA’s motor carrier exemption or need assistance with any wage and hour matter, please contact:

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