



DOL Guidance to Wage and Hour Investigators Seeks to Narrow the Scope of the Motor Carrier Exemption

05.03.2011

05.03.2011

BY: EDWARD "JEB" M. EAKIN, III

In the wake of the 2008 changes made to the Motor Carrier Exemption under the Fair Labor Standards Act, The U.S. Department of Labor ("DOL") has recently provided guidance to its Regional Administrators and District Directors as to the agency's interpretation of the applicable exemptions. Not surprisingly, DOL has narrowed its interpretation of those exemptions. Generally, the Motor Carrier Exemption exempts from overtime requirements under the FLSA those employees over whom the Secretary of Transportation has power to set qualifications and maximum hours. Drivers, driver's helpers, loaders, and mechanics whose work affects the safe operation of certain vehicles in interstate commerce are exempted. Applicable vehicles qualifying for the exemption under the statute are those: (i) weighing more than ten thousand pounds; (ii) designed to transport either (a) more than 8 individuals (including the driver) for pay, or (b) more than 15 individuals (including the driver) not for pay; or (iii) used to transport certain hazardous materials.

Traditionally, DOL has taken the position that the Motor Carrier Exemption applies to employees in four-month increments from the time that the employees perform, or could be asked to perform, the exempt work. As a practical matter, this position was relatively generous for employers who relied on the Motor Carrier Exemption and prevented companies from having to engage in a day-to-day review of the vehicle driven or worked on by each employee. Under the revised guidance, however, DOL has instructed its wage and hour investigators to follow a modified "four month rule" when analyzing whether an employee is exempt from the overtime requirements of the FLSA.

DOL describes this rule as follows:

Employees who performed, or could have been called upon to perform, duties affecting the safe operation of a motor vehicle in interstate commerce in any workweek are exempt from FLSA overtime requirements for the next four months, **except for workweeks in that period in which their duties, in whole or in part, affect the safe operation of a small vehicle in interstate commerce**

Therefore, under DOL's new guidance, even if an individual is a member of a group of drivers who may be instructed by their employer to drive a truck weighing 10,001 lbs. or more to another state, if that same individual is asked to repair a company truck weighing 10,000 lbs. or less for one day in a four month period and that person works more than forty hours in the workweek in which such repairs were made, then he or she is due overtime even if that is the only instance in an entire year that the employee is asked to make the small truck repairs.

This interpretation of the four month rule appears at odds with a number of federal courts that have routinely held that in so-called "mixed fleet" cases, the Motor Carrier Exemption should apply so long as the time an employee spends operating commercial motor vehicles is more than minimal. At this juncture, it is unknown as to the amount of deference a reviewing court would provide DOL's recent rule change. Nevertheless, employers relying on the Motor Carrier Exemption should carefully review their wage and hour policies to ensure that potential violations do not exist, especially if they are facing a wage and hour audit by DOL.

For more information about this topic, please contact Jeb Eakin, 804.420.6428 or jeakin@williamsmullen.com or any member of the Williams Mullen Transportation & Logistics Team.

Related People

Related Services

- Transportation & Logistics