

FMCSA Issues Order Preempting Washington's Meal and Rest Break Rules as Applied to Commercial Truck Drivers

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The U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) issued [an order](#) this week that Washington State's meal and rest break rules are preempted as applied to property-carrying commercial motor vehicle drivers subject to its hours of service rules. This order follows decisions by the FMCSA in late 2018 in which the agency announced that [California's meal and rest break rules were similarly preempted](#).

According to the FMCSA, the federal Motor Carrier Safety Act of 1984 "prohibits [s]tates from enforcing a law or regulation on [commercial motor vehicles] that the Secretary of Transportation has determined to be preempted" by federal law. Preemption is appropriate "when the state law or regulation has the same effect" as the federal safety rules, is less stringent than the federal safety regulation, or is more stringent than the federal safety regulation. Where a state law or regulation is more stringent, it may be preempted if it "(1) has no safety benefit; (2) is incompatible with the [federal safety rules]; or (3) would cause an unreasonable burden on interstate commerce."

In late 2018, the FMCSA concluded that California's hours-of-service rules applicable to all California employees were preempted for commercial motor vehicle drivers under the principles described above. The FMCSA limited its preemption decision to California's meal and rest break rules, but it also suggested (without ruling) that meal and rest break rules under the state laws of Oregon and Washington were substantially similar to those under California law, and placed similar burdens on interstate motor carriers. In April 2019, the Washington Trucking Associations asked the FMCSA to similarly preempt Washington's meal and rest break rules, but the FMCSA waited almost two years to issue this week's ruling.

Washington's meal and rest break rules are more burdensome than the FMCSA's hours of service rules. Under Washington's Industrial Welfare Act, all nonexempt employees must be provided with a meal period of at least 30 minutes. This meal break must start no less than two hours after work begins and no later than five hours after work begins. The meal break may be unpaid, but only if the employee is relieved from all work duties of any kind. Employees must also be provided with "a rest period of not less than ten minutes ... for each four hours of working time." These rest break periods must be scheduled as near as possible to the midpoint of the four-hour work period, and no employee can be required to go more than three hours without a fully paid rest break.

Washington State has long taken the position that its Minimum Wage Act and Industrial Welfare Act apply to all Washington-based employees regardless of where their work is performed. Thus, until now, Washington State has required that commercial motor carriers must provide their drivers with Washington-compliant meal and rest breaks even when their Washington-based drivers are performing most of their driving duties outside of Washington

This week's ruling by the FMCSA relieves commercial motor carriers of the obligation to comply with Washington's meal and rest break rules but, of course, they still must comply with the FMCSA's hours-of-service rules. However, it is unclear how long the FMCSA's ruling will remain in effect, as just this week the U.S. Court of Appeals for the Ninth Circuit heard oral argument on the FMCSA's California preemption decision and is expected to issue a ruling soon. Questions by the Ninth Circuit panel judges suggested to some observers that the court may be leaning in favor of setting aside the FMCSA's broad preemption decision, which was generally much broader than any prior such decision. If the Ninth Circuit does set aside the FMCSA's decision to preempt California's meal and rest break rules (and, again, it is too soon to know which way the Ninth Circuit will rule on this matter), the Washington State Department of Labor and Industries may ask for similar relief from the Ninth Circuit.

At least for now, the FMCSA's enforcement position is that Washington's meal and rest break rules are not applicable to interstate commercial drivers based in Washington State. Nonetheless, because the FMCSA's decision is almost certainly going to be appealed and there is a material chance that the decision could be overturned, any carrier with Washington-based drivers may want to continue complying with the Washington meal and rest break rules.

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