

The Motor Carrier Overtime Exemptions: The Importance of Proper Employee Classification

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Fair Labor Standards Act and Overtime Exemptions

The United States Department of Labor recently released the final overtime rule of the Fair Labor Standards Act (FLSA), which in effect doubled the minimum salary needed to qualify for overtime exemptions. Under this Final Rule, the regulations to determine whether white collar salaried employees, such as those employed in an executive, administrative, or professional capacity, are exempt from the FLSA's minimum wage and overtime pay.

While the new overtime rule will have no effect on motor carrier employees exempt under the Motor Carrier Act, this article will serve as a reminder of the proper classifications of employees to qualify for an overtime exemption under the Motor Carrier Act.

The Motor Carrier Exemption under the Fair Labor Standards Act

Section 13(b)(1) of the Fair Labor Standards Act provides an overtime exemption for employees who are within the authority of the Secretary of Transportation to establish qualifications and maximum hours pursuant to Section 204 of the Motor Carrier Act of 1935. 49 USCS §31502. The Secretary of Transportation may prescribe requirements under the Motor Carrier Act for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.

To qualify for exemption from overtime pay requirements under the Motor Carrier Act, the employer has the burden of showing that the employee meets the requirements set out in 29 C.F.R. § 782.2(b). In general, the employer must show:

1. A carrier whose transportation of passengers or property by motor vehicle is subject to the Secretary of Transportation's jurisdiction, i.e., its transportation of passengers or property takes place in interstate commerce;
2. The employee is a driver, driver's helper, loader, or mechanic as defined by the Act; and
3. The employee engages in activity that affects the safety of operation of motor vehicles in the transportation of passengers or property in interstate or foreign commerce.

In determining whether a specific employee falls within an exempt class, neither the title of the position or name given to the duties is controlling. 29 C.F.R. § 782.2(b)(2). Instead, the character of the duties involved in the performance of the job is determinative. 29 C.F.R. § 782.2(b)(2).

Outlined below are a summary of the statutory definitions of each exempted position under the Act:

A. Drivers

A “driver” is defined in §782.3 as an individual who drives a motor vehicle in transportation which is in interstate or foreign commerce. The definition for driver does not require that the individual be engaged in such work at all times. The authors of the statute recognized that even full-duty drivers devote some of their working time to activities other than such driving.

“Drivers” include partial-duty drivers. Partial-duty drivers include the following:

- Individuals whose driving duties are concerned with transportation some of which is intrastate commerce and some of which is interstate or foreign commerce within the meaning of the Motor Carrier Act;
- Individuals who ride on motor vehicles engaged in transportation in interstate or foreign commerce and act as an assistant or relief drivers of the vehicles in addition to helping with loading, unloading, and similar work;
- Drivers of chartered buses or farm trucks who have many duties unrelated to driving or safe operation of their vehicles in interstate transportation on the highways; and
- So-called “driver-salesmen” who devote much of their time to selling goods rather than to activities affecting such safety of operation.

The driver must also directly affect the safety of operation whenever he drives a motor vehicle in interstate or foreign commerce and acts as an assistant or relief driver of vehicles

B. Driver’s Helpers

A driver’s “helper” is defined in §782.4 as an employee other than a driver, who is required to ride on a motor vehicle when it is being operated in interstate or foreign commerce within the meaning of the Motor Carrier Act. The term does not include employees who ride on the vehicle and act as assistants or relief drivers. The definition has classified employees such as armed guards on armored trucks and conductorettes on buses as helpers with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service because of their engagement in some or all of the activities which directly affect safety. Assisting in loading vehicles and unloading vehicles has been held to not affect “safety of operation.” To be exempted as a driver’s helper, it is required as part of the employee’s job to ride on a motor vehicle while it is being operated in interstate or foreign commerce.

C. Loaders

A “loader” is defined in §782.5 as an employee of a carrier whose duties include the proper loading of his employer’s motor vehicle so that they may be safely operated on the highways of the country. Duties also typically include unloading and the transfer of freight between vehicles at the warehouse. A loader directly affects safety of operation so long as he has responsibility for loading, exercising judgment and discretion in planning and building a balanced load or in placing, distributing or securing the pieces of freight in such a manner that the safe operation of the vehicles on the

highways in interstate or foreign commerce will not be jeopardized.

The following activities have been held to provide no basis for exemption:

- Unloading;
- Placing freight in convenient places in the terminal;
- Checking bills of lading;
- Wheeling or calling freight being loaded or unloaded;
- Loading vehicles for trips which will not involve transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act; and
- Activities relating to the preservation of the freight as distinguished from the safety of operation of the motor vehicles carrying such freight on the highways.

D. Mechanics

A “mechanic” is defined in §782.6 as an employee who is employed by a carrier and whose duty it is to keep a motor vehicle operated in interstate or foreign commerce by his employer in a good and safe working condition. Courts have held that mechanics perform inspections, adjustments, repairs or maintenance work on the motor vehicles themselves and are directly responsible for creating or maintaining physical conditions essential to the safety of the vehicles on the highways through the correction or prevention of defects which have a direct causal connection with the safe operation of the unit as a whole.

An employee is not exempted as a mechanic from the overtime provisions merely because he works in the motor carrier’s garage, or he is called a mechanic just because he is a mechanic by trade and does mechanical work. Other activities that do not directly affect safety of operation include those performed by employees whose jobs are confined to such work as that of dispatchers, carpenters, tarpaulin tailors, vehicle painters or servicemen who do nothing but oil, gas, grease or wash motor vehicles. The exemption has also been held inapplicable to mechanics repairing and rebuilding parts, batteries, and tires removed from vehicles where a direct causal connection between their work and the safe operation of motor vehicles on the highways is lacking because they do no actual work on the vehicles themselves and entirely different employees have the exclusive responsibility for determining whether the products of their work are suitable for use and for the correct installation of such parts on the vehicles.

The Cost of Improper Classification

Carriers have been known to improperly apply Section 13(b)(1) overtime exemption to employees who are not classified properly as described above or not engaged in “safety affecting activities.” Such improperly classified employees may include dispatchers, office personnel, those who unload vehicles or those who load but are not responsible for the proper loading of the vehicle. Employers should keep in mind that only drivers, driver’s helpers, loaders who are responsible for proper loading, and mechanics working directly on motor vehicles that are to be used in transportation of passengers or property in interstate commerce, can be exempt from the overtime provisions of the FLSA under Section 13(b)(1). These positions are determined by the specific duties of job as outlined in the above provisions.

Employers should regularly audit the classification of their employees’ exemption status. Misclassification can expose the employer to governmental investigation. An underpaid employee may be entitled to compensation for back wages and overtime for a period of either two or three

years, a variety of penalties, and in most cases, attorney fees and costs.

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