The Exception to the Exemption

August 26, 2021

In most circumstances the Motor Carrier Act (MCA) exempts drivers from overtime wages as mandated by the Fair Labor and Standards Act (FLSA). The MCA provides that employees whose qualifications and hours of service are dictated by the Secretary of Transportation are exempt from the overtime rates set forth in the FLSA. However, there also is a critical exception to this exemption when it comes to “small vehicles.” The small vehicle exception was established when Congress passed the SAFETEA-LU Technical Corrections Act (TCA). The provision notes that the FLSA overtime provisions apply to a “covered employee,” which is defined as an employee whose work, either fully or partially, is defined by safely operating a vehicle less than 10,000 pounds on public highways in interstate or foreign commerce.

While seemingly straightforward, the US Circuit Courts of Appeal have wrestled when applying the small vehicle exception in recent cases. For instance, the circuits are divided on how to handle mixed fleets, or those instances when an employee splits his or her time operating both heavy trucks and small vehicles. Appellate courts, including the First Circuit and the Fifth Circuit, have placed the burden of establishing that the exception applies on the employee; other circuits, most notably, the Tenth Circuit, hold that the employer should prove the exception's applicability. Moreover, most circuits hold that the gross weight of the vehicle is the appropriate measure when distinguishing “small” and “heavy” vehicles. Yet, the Ninth Circuit, which encompasses California, has opted to use the vehicle's actual weight. Lastly, the circuits are divided on the question of “mixed fleets.” For example, a number of circuits, such as the First, Second, and Third Circuits, hold that employees working within a mixed fleet (vehicles that are both under the 10,000-pound threshold, and over) are eligible for overtime if their work entirely, or partially, involves operating vehicles under 10,000 pounds. On the other hand, the Seventh Circuit applies a more complicated formula to assess employee eligibility for overtime if their work involves operating vehicles over 10,000 pounds.

Two examples: In *Noll v. Flowers Foods Inc.*, the US District Court for the District of Maine, within the First Circuit, placed the burden on drivers to establish if they were covered employees. Also within the First Circuit, the US District Court for the District of Massachusetts maintained that split fleets can qualify for the exemption if they spend a majority of their time operating a vehicle below 10,000 pounds, or their time operating a heavier vehicle was de minimus in *Botero v. Commonwealth Limousine Service, Inc*. There, the court dismissed a carrier's assertion that its employees were exempt from overtime pay because they drove large vehicles some of the time. Rather the court opined that since the majority of time the employees were operating small vehicles, they qualified for overtime pay as contemplated by the FLSA.

As the courts lack a uniform rule, it is important for carriers to note the governing law in the jurisdiction in which they operate. Otherwise, failing to provide overtime pay to qualified employees expose employers to significant liabilities such as mandatory treble damages for wage and hour violations under state wage and hour acts as well as the FLSA.

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