USWHD Memo Addresses FLSA "Motor Carrier" Exemption

Insights
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The federal Fair Labor Standards Act's Section 13(b)(1) provides an overtime exemption for "any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to" a specific section in Title 49 of the U.S. Code dealing with federal motor-carrier law. Employers who have relied upon or followed this so-called "motor-carrier" exemption will remember that an inconspicuous 2005 amendment to Title 49 substantially narrowed its scope. A further revision in 2008 introduced yet other questions and uncertainties.

What Are The Basics?

In the proper circumstances, this exemption applies to drivers, driver's helpers, loaders, or mechanics performing work affecting the safety of operation of certain motor vehicles on public highways in interstate or foreign commerce. The necessary vehicles are those:

• Of more than 10,000 lbs. that are operated in interstate or foreign commerce; or

• Designed or used to transport more than eight passengers (including the driver) for compensation; or

• Designed or used to transport more than 15 passengers (including the driver) and not used to transport passengers for compensation; or

• Used in transporting hazardous material for which placarding is required under federal regulations.

USDOL's Enforcement Positions

In an internal memorandum (see below), the U.S. Wage and Hour Division has now refined how it will enforce this exemption in light of the 2005 and 2008 legislative changes. The Division's general position remains that, if the exemption applies to an employee, it does so in four-month periods of time beginning when the employee performs (or could reasonably have been called upon to perform) duties qualifying for the exemption.

However, perhaps the Division's most momentous announcement is that an otherwise-exempt employee is nevertheless subject to FLSA overtime for a workweek in which he or she performs any

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employee is nevertheless subject to FLSA overtime for a workweek in which he or she performs any work that affects the safe operation in interstate commerce of a vehicle not falling within one of the above four categories. For example, even if 99% of the time a driver transports property moving in interstate commerce in a vehicle that weighs more than 10,000 lbs., the Division says that the FLSA overtime exemption does not apply to a workweek in which he or she spends any time driving a smaller vehicle in interstate commerce (assuming that the vehicle does not fit into one of the other categories).

In evaluating the over-10,000 lb. threshold, for enforcement purposes the Division will look to the "gross vehicle weight rating" found on the vehicle (usually shown on a plate on the vehicle's door jamb). If the vehicle is pulling a trailer, the Division will use the "gross combined vehicle weight rating".

The Bottom Line

All employers who are either relying upon the FLSA "motor carrier" exemption or considering doing so should take the Division's memorandum into account in deciding how to proceed. Of course, as always, employers must keep in mind the possible impact of the overtime laws of other jurisdictions, such as a state overtime requirement that has no exemption analogous to FLSA Section 13(b)(1).

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