



Labor Department Says Truck Drivers Need Not Be Paid For Sleeping

3 THINGS YOU NEED TO KNOW ABOUT OPINION LETTER

Insights

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Trucking companies will no longer need to pay their drivers for certain off-duty time, potentially including time spent sleeping in their sleeper berth units, after the Labor Department issued an opinion letter yesterday confirming that such time is generally not compensable. The letter is a welcome one for the trucking industry, clearing up confusion caused by recent conflicting court decisions that held that off-duty time may be limited to eight hours a day when a driver is on a trip and spending off-duty time in their sleeper. However, you should make sure you understand the full ramifications of the opinion letter before changing your pay practices. Here are three things you need to know about yesterday's significant news.

1. USDOL Opinion Letter Confirms Correct Pay Practice

The U.S. Department of Labor (USDOL) has recently resumed the welcome practice of issuing opinion letters to those inquiring about compliance with the Fair Labor Standards Act (FLSA). Although the letters themselves are legally non-binding, they are a clear signal to the world about how the agency will enforce such a situation were it to be placed in front of them in an investigation or adversarial process, and they are often followed by courts.

Yesterday's letter was initiated when a motor carrier asked the USDOL for guidance about paying sleeping truck drivers. According to the unidentified employer, the drivers are often in the truck's sleeper berth (a) not performing work, (b) permitted to sleep, and (c) not "on call" to perform any work. In a typical week, the carrier said, a driver might be working (and compensated) around 55 hours per week, while in the sleeper berth about 50 hours.

The USDOL's letter said that, in such a scenario, the drivers are "waiting to be engaged" to work during the time they are in the sleeper berths, which is not compensable under federal wage and hour law. During this time, so long as they are completely relieved from duty for periods long enough that enable them to use the time effectively for their own purposes, they are not "engaged to wait" and therefore not entitled to pay.

2. This Is A Change To Existing Law

You may be currently taking the safe route and paying your drivers for the time they spend in their sleeper berths; this is most likely due to confusion in the law that existed prior to yesterday's opinion letter. Although a 1951 USDOL opinion letter concluded that sleeping time was not compensable, several pieces of guidance that have been issued since then have taken issue with that conclusion and created scenarios where sleeping time was considered paid time. With the issuance of this opinion letter, the USDOL says it is "withdrawing the opinion letters" that make that case "to the extent they conflict with this letter."

Moreover, yesterday's letter takes direct aim at several 2018 federal court decisions from Arizona and Arkansas that ruled sleeper berth time should be compensated since it was considered "on duty" time. The American Trucking Associations hailed the opinion letter for rebutting these opinions, saying that it "clears up confusion created by two recent court decisions that called the compensability of sleeper berth time into question." While the letter doesn't have the explicit power to overrule those cases directly, courts generally follow the guidance issued by the agency implanting the regulations in question – meaning that this opinion letter should be followed the next time the issue is challenged in court.

3. **Beware: Some Exceptions Exist To This New Standard**

Before you alter your pay practices, it's worth noting that the opinion letter is not absolute. It provides several circumstances that would cause you to be required to pay your drivers for time they spend in their sleeper berths. First, drivers would be considered to be "engaged to wait" and due to be paid if their time in the sleeper berth belonged to and was controlled by the employer. For example, if the driver happens to be in the berth while required to wait at a job site for goods to be loaded into their truck, they would need to be compensated for that time.

Second, if the driver is unable to use the time in the sleeper berth effectively for their own purposes, they would still need to be paid for that time. For example, the opinion letter notes that drivers who are required to remain on call, study job-related materials, do paperwork, or perform similar activities while in their sleeper berths may be unable to effectively sleep or engage in personal activities. In those scenarios, trucking companies would still have an obligation to pay their drivers for that time.

Conclusion

Yesterday's opinion letter is a welcome development for the trucking industry, as it adopted a straightforward, plain-language reading of federal law and rejected a burdensome alternative interpretation adopted by several courts. As the ATA noted, the USDOL has now made it easier for employers to "better understand their compliance obligations prospectively, rather than settling such matters only after the fact, through costly and wasteful litigation."

However, it is important to remember that this letter is a non-binding piece of guidance from a federal agency, and doesn't necessarily relieve you of your obligation to pay drivers who spend time in their sleeper berths depending on the circumstances of their arrangement or the relevant state

law that may be in play. You will want to coordinate with your labor and employment counsel to ensure you understand the specific effect this letter will have on your operations, and to see whether you can adopt new pay practices to conform with this standard.

We will continue to monitor further developments at the USDOL and the courts regarding this issue, and we'll provide updates regarding matters of interest. Make sure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney.

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