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Overtime: The Motor Carrier Exemption

The Fair Labor Standards Act's (FLSA) Motor Carrier exemption (MCE) is perhaps the broadest of all the exemptions to the FLSA's overtime requirements, covering a vast array of people with even slight connections to interstate transportation.

Under the MCE, the FLSA's overtime rules do not apply to "any employee with respect to whom the secretary of Transportation (secretary) has power to establish qualifications and maximum hours of service...." 29 USC §213(b)(1).

Applicability of MCE

Thus, in order to determine the applicability of the MCE, courts examine the secretary's "power."

The secretary:

> [M]ay prescribe requirements 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. 49 USC §31502(b) (emphasis added).[1]

The Supreme Court has examined the MCE on several occasions.

The subject employees in *Walling v. Jacksonville Paper Co.*, 317 US 564 (1943), made deliveries completely within a state, but "constantly receiv[ed] merchandise on interstate shipments and distribut[ed] it to their customers [but did] not ship or deliver any of it across state lines." Id. at 565-66. The employees picked up the merchandise from defendant's local warehouses. The Court held that the goods remained in interstate commerce because they were earmarked for specific customers.

> The entry of the goods into the warehouse interrupts but does not necessarily terminate their interstate journey. A temporary pause in their transit does not mean that they are no longer 'in commerce' within the meaning of the Act. [I]f the halt in the movement of the goods is a convenient intermediate step in the process of getting them to their final destinations, they remain 'in commerce' until they reach those points. Then there is a practical continuity of movement of the goods until they reach the customers for whom they are intended. Id. at 568 (citation omitted).

The Court continued:

> [A] break in their physical continuity of transit is not controlling. If there is a practical continuity of movement from the manufacturers or suppliers without the state, through respondent's warehouse and on to customers whose prior orders or contracts are being filled, the interstate journey is not ended by reason of a temporary holding of the goods at the warehouse.... The contract or understanding pursuant to which goods are ordered, like a special order, indicates where it was intended that the interstate movement should terminate. Id. at 569.

In *Southland Gasoline Co. v. Bayley*, 319 US 44 (1943), the Court ruled that existence of the Interstate Commerce Commission's (the predecessor to the secretary) power was not conditioned upon the actual exercise of such power nor a finding that exercise of such power was necessary.

In *Levinson v. Spector Motor Co.*, 330 US 649 (1947), the Court held:

> [I]t is not essential that more than a 'large part' of his time or activities be consumed in activities directly affecting the safety of operation of motor vehicles.... [I]t is not a question of fundamental concern whether or not it is the larger or the smaller fraction of the employee's time or activities that is devoted to safety work. It is the character of the activities rather than the proportion of either the employee's time or of his activities.... Id. at 674-75.

Distribution of Interstate Trips

In *Morris v. McComb*, 332 US 422 (1947), interstate transport accounted for only 3 percent-4 percent of the carrier's total business. Nevertheless, the Court held that all the drivers were exempt because the employer distributed interstate trips "indiscriminately [among] the drivers and [such trips were] mingled with the performance of other like driving services rendered by them otherwise than in interstate commerce. These trips were thus a natural, integral and apparently inseparable part of the common carrier service...." Id. at 433.

In contrast, in *Pyramid Motor Freight Corp. v. Ispass*, 330 US 695 (1947), the Court held that:

> [T]he mere handling of freight at a terminal, before or after loading, or even the placing of certain articles of freight on a motor carrier truck may form so trivial, casual or occasional a part of an employee's activities, or his activities may relate only to such articles or to such limited handling of them, that his activities will not [affect safety]. Id. at 707 (citations omitted).[2]

Other Decisions

In *Martin v. Coyne Int'l Enter. Corp.*, 966 F2d 61 (2d Cir. 1992), the secretary of Labor argued that inasmuch as the Federal Highway

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Administration's regulations defined commercial motor vehicles as those weighing 10,000 pounds or more (see 49 Code of Federal Rules [CFR] §390.5), drivers who drove trucks weighing exactly 10,000 pounds were not exempt. The U.S. Court of Appeals for the Second Circuit rejected the argument, holding that simply because the secretary had chosen not to regulate these employees did not mean that the secretary "lacks the power to do so." Id. at 63.

Plaintiff in *Bilyou v. Dutchess Beer Dist., Inc.*, 300 F3d 217 (2d Cir. 2002), was a delivery driver for a beverage distributor. Although all of the deliveries were within New York, defendant received most of its inventory from out of state. Plaintiff also picked up empty containers from defendant's customers, which were then shipped out of state.[3] The court ruled that transportation of empties satisfied the interstate commerce requirements and declined to address whether transportation of beverages manufactured out of state also satisfied the requirement. Id. at 224.

Plaintiff argued that because defendant was primarily a wholesaler, not a transporter, he was not covered by the MCE because of 49 USC §13505(a). The court held that:

> Section 13505 has no bearing on the Secretary's power...to establish qualifications and maximum hours of service.... The fact that §13505 denies the Secretary power to prescribe economic and licensing regulations...in no way contradicts the Secretary's authority...to set qualifications and maximum hours of service for drivers....Id. at 226.

In *Masson v. Ecolab, Inc.*, 2005 USDistLEXIS 18022 (SDNY Aug. 18, 2005), plaintiffs served customers exclusively within the state. The court denied the employer's motion for summary judgment because there were questions of fact as to whether plaintiffs could be called upon to cross state lines and "whether it was only under 'extraordinary' circumstances that plaintiffs ordered items for specific customers and then delivered them, or 'likely' that they could be 'called upon in the ordinary course of their work' to do so." Id. at *32.

The court also held that "any interstate transportation...of equipment or parts ordered for specific customers constitutes interstate commerce." Id. at *20. Nevertheless, "the activities of a plaintiff in one workweek do not always determine that plaintiff's exempt status for his entire period of employment." Id. at *18

The *Masson* court also rejected the employer's argument that the employee's occasional handling of customers' checks that were ultimately deposited in the U.S. mail satisfied the exemption because the "handling of customers' checks [was nothing] more than a minor, non-essential part of plaintiff's duties...." Id. at *35.

'McGuiggan v. CPC Int'l'

Plaintiffs in *McGuiggan v. CPC Int'l, Inc.*, 84 FSupp2d 470 (SDNY 2000), distributed defendant's products to retailers entirely within New York. The court found that they were covered by the MCE because customers in New York phoned in their orders to New Jersey, from where defendants shipped the goods in response to those specific orders.

The exemption also applies to employees who drive vehicles other than trucks and buses, e.g., vans and automobiles, including private vehicles, if they transport instruments of commerce, e.g., tools, equipment, or parts across state lines.

For example, plaintiffs in *Ford v. Gannett Co.*, 2005 U.S. Dist. LEXIS 30106 (WDNY Nov. 18, 2005), regularly drove their own cars in order to deliver newspapers published by defendant. The court granted defendant's motion for summary judgment because the advertising inserts and certain supplements included with the papers were printed and shipped from outside New York, and then inserted into the newspaper without modification.

The entry of the goods into the warehouse interrupts but does not necessarily terminate their interstate journey. A pause in transit does not mean they are no longer 'in commerce' under the act.

In *Friedrich v. U.S. Computer Services*, 974 F2d 409 (3rd Cir. 1992), plaintiffs installed, maintained and repaired computers. They crossed state lines with tools, parts, and equipment. The court held that, "the plaintiffs transported tools, parts, and equipment without which they could not have performed their duties...the transportation of those items was an independent and essential reason for their service trips." 974 F2d at 417.[4]

The court rejected plaintiffs' argument that the "exemption would apply only when they personally transported equipment across state lines by motor vehicle [because] the parts and equipment...were distributed in a companywide interstate network system." 974 F2d at 413, n. 6. The court also held that "the MCE does not limit motor private carriers to those who ship large amounts of property or ship property as their principal business; it merely requires that they transport property 'to further a commercial enterprise.'" Id. at 417.

The MCE applies only to classes of employees whose work directly affects safety, including drivers, drivers' helpers, loaders, and mechanics. 29 CFR §782.2(b)(1). Loaders "exercise judgment and discretion in planning and building a balanced load or in placing, distributing, or securing the pieces of freight in such a manner [to insure] safe operation of the vehicles...." 29 CFR §782.5. Thus, the exemption does not apply to employees such as loading-dock workers who do not actually load material onto the truck.

The MCE applies only to employees of the carrier; it does not apply to employees of companies that service or support the carrier. 29 CFR §782.2(d). For example, in *Boutell Service Co. v. Walling*, 327 US 463, 467-68 (1945), the Court ruled that the exemption did not apply to employees of a company that serviced a carrier's vehicles, even though the company worked exclusively for the carrier.

Despite exemption from the FLSA's overtime requirement, state overtime laws still apply to employees of motor carriers. See *Pettis Moving Co. Inc. v. Roberts*, 784 F2d 439 (2d Cir. 1986) (MCE does not preempt requirements of New York's overtime law).

Conclusion

Section 13(b)(1) provides an absolute exemption from the FLSA's overtime requirements to employees who fall under the jurisdiction of the secretary of Transportation. As with the other FLSA exemptions, an employer asserting its application has the burden of proof. Thus, employers must insure that employees they treat as FLSA exempt meet the secretary of Transportation's jurisdictional definitions, and must insure compliance with all applicable state laws.

1. 49 USC §13102 defines the various types of "carriers" within the secretary's jurisdiction.

2. Compare *Friedrich v. U.S. Computer Services*, 974 F2d 409 (3rd Cir. 1992); *Crooker v. Sexton Motors, Inc.*, 469 F.2d 206 (1st Cir. 1972); *Harrington v. Despatch Industries, L.P.*, 2005 WL 1527630 (D. Ma. June 29, 2005); and *Sinclair v. Beacon Gasoline Co.*, 447 F. Supp. 5, 11 (W.D. La. 1976) (all rejecting de minimis exception), with *Hopkins v. Texas Mast Climbers, LLC*, 2005 U.S. Dist. Lexis 38721 (S.D. Texas Dec. 14, 2005); and *Coleman v. Jiffy June Farms, Inc.*, 324 F. Supp. 664 (S. D. Ala. 1970) (both applying de minimis exception).

3. Although a different company handled the empties, the owners of the defendant company also owned that company and the two companies shared space. See id. at 224-25.

4. A Westlaw search on May 30, 2006 did not reveal any federal case discussing whether a laptop computer the employee uses to perform work might constitute a "tool."