

## Fact Sheet #19: The Motor Carrier Exemption under the Fair Labor Standards Act (FLSA)

Section 13(b)(1) of the [FLSA](#) provides an [overtime](#) exemption for employees who are within the authority of the Secretary of Transportation to establish qualifications and maximum hours of service pursuant to section 204 of The Motor Carrier Act of 1935.

The Secretary of Transportation's authority, and thus the section 13(b)(1) [overtime](#) exemption, applies to employees who are:

1. Employed by a motor carrier or motor private carrier (see ***Employer*** below); and
2. Drivers, helpers, loaders, or mechanics whose duties affect the safety of operation of commercial motor vehicles in transportation on public highways in interstate or foreign commerce (see ***Employee Duties*** below); and
3. Performing duties on commercial motor vehicles (see ***Commercial Vehicles*** below).

### 1. Employer

- **Motor Carriers** are persons providing commercial motor vehicle transportation for compensation;
- **Motor Private Carriers** are persons other than motor carriers transporting property by commercial motor vehicle if the person is the owner, lessee, or bailee of the property being transported, and the property is being transported for sale, lease, rent, or bailment, or to further a commercial enterprise.

### 2. Employee Duties

- The ordinary duties of the employee's job must include the performance, either regularly or from time to time, of safety-affecting activities on a type of commercial motor vehicle listed below in transportation on public highways in interstate or foreign commerce. Employees are exempt in all workweeks when performing in a job that generally includes such duties in all workweeks, regardless of the proportion of "safety affecting activities" performed in a particular workweek. On the other hand, where the continuing duties of the employee's job have no substantial direct effect on such "safety of operation," or where such safety affecting activities are so trivial, casual, and insignificant as to be de minimis, the exemption will not apply in any workweek (so long as there is no change in the duties).
- Transportation involved in the employee's duties must be in interstate commerce (across State or international lines) or connect with an intrastate terminal (rail, air, water, or land) to continue an interstate journey of goods that have not come to rest at a final destination.
- Safety affecting employees who have not made an actual interstate trip may still be exempt if:
  - a) The employer is shown to have an involvement in interstate commerce; and
  - b) The employee could, in the regular course of employment, reasonably have been expected to make an interstate journey or could have worked on the motor vehicle in such a way as to be safety affecting.

Satisfactory evidence of the above could take the form of statements from the employees, or documentation from the employer, such as employee agreements.

- Where such evidence is developed with regard to employees, or where the employee actually has driven in interstate commerce, the Secretary of Transportation will assert jurisdiction over those employees for a four-month period beginning with the date they could have been called upon to, or actually did, engage in the carrier's interstate activities. Thus, such employees would be exempt under section 13(b)(1) for the same four-month period, notwithstanding references to the contrary in [29 C.F.R. § 782.2](#).

### **3. Commercial Vehicles**

- Vehicles with a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater; or
- Vehicles designed or used to transport more than 8 passengers (including the driver) for compensation; or
- Vehicles designed or used to transport more than 15 passengers, including the driver, and not used to transport passengers for compensation; or
- Vehicles used in transporting hazardous material, requiring placarding under regulations prescribed by the Secretary of Transportation.

### **Typical Problems**

The section 13(b)(1) [overtime](#) exemption does not apply to employees not engaged in “safety affecting activities”, such as dispatchers, office personnel, those who unload vehicles, or those who load but are not responsible for the proper loading of the vehicle. Only drivers, drivers’ helpers, loaders who are responsible for proper loading, and mechanics working directly on the above-named 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).

The section 13(b)(1) overtime exemption does not apply to employees of non-carriers such as commercial garages, firms engaged in the business of maintaining and repairing motor vehicles owned and operated by carriers, or firms engaged in the leasing and renting of motor vehicles to carriers.

### **Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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