

Minimum Wage Opinion Letter **03-17-03 - Applicability of M.G.L. c. 151, s.1A(8)**

March 17, 2003

I am writing in response to your request for this Office's written opinion regarding the applicability of M.G.L. c. 151, §1A(8), a state overtime exemption, to a dock loader who primarily performs loading functions but also spends a portion of the workday riding on loaded trucks. ^[1]

Generally, the Massachusetts Minimum Fair Wage Law, M.G.L. c. 151, requires employers to pay overtime compensation for work in excess of 40 hours in a given workweek. Section 1A(8) provides an exemption from this requirement. It provides, in pertinent part, that an employer need not pay overtime to "a driver or helper on a truck with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section two hundred and four of the motor carrier act of nineteen hundred and thirty-five." This exemption closely tracks an exemption found in federal minimum wage and overtime law, the Fair Labor Standards Act, with an important exception. Section 1A(8) only exempts "a driver or helper on a truck," while federal law exempts "any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours," which includes four categories of workers: drivers, drivers' helpers, loaders and mechanics. ^[2] See 29 U.S.C. §213(b)(1).

Recognizing this distinction, this Office, in a letter opinion issued February 26, 2002, stated that for an individual worker to be exempt from overtime compensation under M.G.L. c. 151, §1A(8), the following criteria must be met: 1.) the driver or helper on a truck must be an employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the Motor Carrier Act of 1935 as codified; 2.) the employee must be a "driver" as defined by 29 C.F.R. §782.3 or a "drivers' helper" as defined by 29 C.F.R. §782.4, i.e. be employed in these classes of work and be performing safety-affecting activities. Loaders and mechanics are not included within the M.G.L. c. 151, §1A(8) exemption.

Turning to the case presented, according to the job description for "Dock Loader" submitted to this Office, this particular employee's "primary responsibility is loading of outbound trailers for delivery in a timely and efficient manner [and] unloading of inbound trailers as necessary." The employee's time is apportioned as follows:

Loading and securing of outbound freight	Daily	65%	
Unloading of inbound trailers as necessary	Daily	10%	
Timely and efficient submission of related paperwork	Daily	10%	As
Secure and check freight for safety purposes via a short ride with driver	Daily	5%	the
Marginal functions: housekeeping, re-stacking of freight, training and assisting new employees	Daily	10%	

state exemption is limited to drivers and helpers on trucks, the relevant question is whether the time spent riding on the truck and assessing the load for safety purposes (5%) causes this employee to fall within the category of a "drivers' helper, thereby changing the employee's otherwise non-exempt status as a loader under state overtime law.

A "drivers' helper" is defined under 29 C.F.R. §782.4 as:

an employee other than a driver, who is required to ride on a motor vehicle when it is being operated in interstate or foreign commerce within the meaning of the Motor Carrier Act . . . This definition has classified all

such employees, including armed guards on armored trucks and [conductors] on buses, as "helpers" with respect to whom he has power to establish qualifications and maximum hours of service because of their engagement in some or all of the following activities which, in his opinion, directly affect the safety of operation of such motor vehicles in interstate or foreign commerce (citation omitted):

Assist in loading the vehicles (they may also assist in unloading (citation omitted), an activity which has been held not to affect "safety of operation," ...; dismount when the vehicle approaches a railroad crossing and flag the driver across the tracks, and perform a similar duty when the vehicle is being turned around on a busy highway or when it is entering or emerging from a driveway; in case of a breakdown, (1) place the flags, flares, and fuses as required by the safety regulations. (2) go for assistance while the driver protects the vehicle on the highway, or vice versa, or (3) assist the driver in changing tires or making minor repairs; and assist in putting on or removing chains.

29 C.F.R. §782.4(a). Such an employee may be a "helper... even though such safety-affecting activities constitute but a minor part of his job." 29 C.F.R. §782.4(b). Section 782.4(c) further states that this "exemption applies to employees who are, under the Secretary of Transportation's definitions, engaged in such activities as full- or partial- duty helpers' on motor vehicles being operated in transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act."

Given this broad definition, it would appear that the employee in question, who rides on the truck to check freight for safety purposes, would be considered a "drivers' helper" (and therefore a "helper on a truck" within the meaning of M.G.L. c. 151, §1A(8)), provided the employee is required to ride on the motor vehicle when it is being operated in interstate or foreign commerce within the meaning of the Motor Carrier Act. ^[3] Even though this employee's primary duties are clearly those of a "loader," it is equally clear that the federal overtime exemption applies regardless of the proportion of the employee's time which is devoted to "safety-affecting" driver's helper activities. See 29 C.F.R. §§782.2(b)(3), 782.4(b), 782.4(c). See also [Morris v. McComb](#), 332 U.S. 422 (1947) (exemption applied where total trips made by drivers in interstate commerce was three to four percent of carrier's business). Given that the state exemption mirrors the federal exemption as it relates to these driver's helpers, it is this Office's opinion that M.G.L. c. 151, §1A(8) should similarly apply regardless of the proportion of time spent performing "safety-affecting" driver's helper activities. ^[4] See [Goodrow v. Lane Bryant, Inc.](#), 423 Mass. 165, 169-170 (2000) (in the absence of a statutory definition, we may look to interpretations of analogous Federal statutes for guidance). Therefore, the employee in question is a "helper on a truck" within the meaning of M.G.L. c. 151, §1A(8), and is exempt from state overtime law, provided the employee is required to ride on the motor vehicle when it is being operated in interstate or foreign commerce within the meaning of the Motor Carrier Act.

I hope this information has been helpful. Please note that this opinion is based solely on the information provided with your request. The existence of other facts not contained in your request might require a different conclusion. If you have any further questions, please feel free to contact me.

Sincerely,
Lisa C. Price
Legal Counsel

^[1] I will assume, for the purposes of this discussion, that the individual is employed by a carrier whose transportation of passengers or property by motor vehicle is subject to the Secretary of Transportation's jurisdiction under section 204 of the Motor Carrier Act as codified, and that the trucks involved are transporting goods moving in interstate commerce.

^[2] The relevant functions, powers, and duties of the Interstate Commerce Commission were transferred to the Secretary of Transportation in 1966.

^[3] A dock loader who is not required to ride on a motor vehicle when it is being operated in interstate or foreign commerce within the meaning of the Motor Carrier Act is not a "helper on a truck" within the meaning of M.G.L. c. 151, §1A(8). See [DOS Minimum Wage Opinion Letter, dated August 6, 2002](#).

^[4] This assumes that such "safety-affecting" activities are not so insignificant as to be de minimus. See 29 C.F.R. §782.2(b)(3).

= Names have been Omitted