

August 6, 2002

I am writing in response to your letter of July 30, 2002 seeking clarification of the Division of Occupational Safety's(DOS) recent determination regarding the applicability of M.G.L. c. 151, s. 1A(8) to work performed by "truck loaders." ^[1] See DOS Opinion Letter MW-2002-008, dated February 26, 2002.

As I understand it, the *** has a current case involving dock workers employed by ***. ***, through counsel, has asked the *** to reconsider its position that the company must pay overtime to these dock workers. *** counsel has submitted both a letter and supporting documentation which you have forwarded to me for consideration.

*** employs both drivers and dock workers. ^[2] *** states that its dock workers are trained to handle hazardous materials and are responsible for loading its trucks in a manner that is safe for transit. Dock workers move the freight into trailers that are backed into the loading docks; therefore, they perform their work while inside the tractor-trailer units. These dock workers are responsible for bracing the loads, and otherwise "stacking" them, so as to avoid shifting during transit. Dock workers do not ride on the trucks and are not required to possess a commercial driver's license as a condition of employment.

*** argues that its dock workers should be exempt from state overtime requirements because they function as "helpers on a truck," a class of work exempt from overtime, in that they work on and within the trucks providing loading assistance to ensure safe transit. *** states that it could discover no reason for the inclusion of the term "helper on a truck" in Section 1A(8), and it argues that, in the absence of a statutory definition, DOS should take a "functional approach" and consider its dock workers to be such "helpers."

This Office is unpersuaded by this argument. At the time M.G.L. c.151, s. 1A, was added to the Massachusetts Minimum Fair Wage Law, federal regulations under the Fair Labor Standards Act (FLSA) included definitions of four classes of employees covered by the analogous federal exemption, 29 U.S.C. s. 213(b)(1): drivers, drivers' helpers, loaders, and mechanics. See 29 C.F.R. ss. 782.3-782.6 (1949 & Supp. 1960). As the Massachusetts exemption was clearly crafted with the federal exemption in mind, the only logical conclusion is that the term "helper on a truck" refers to the second of these classes of work: "drivers' helpers." These "drivers' helpers" were defined, in pertinent part, as "an employee other than a driver, who is required to ride on a motor vehicle." 29 C.F.R. s. 782.4 (1949 & Supp. 1960).

This Office does not dispute that *** dock workers perform work directly affecting safety of operation of motor vehicles on public highways in transportation of interstate or foreign commerce within the meaning of the Motor Carrier Act and that the workers must receive proper training to perform these functions. However, the character of the activities of its dock workers seems to fall squarely within the definition of a "loader" under federal regulations (See 29 C.F.R. '782.5), a class of work the Massachusetts Legislature chose not to include within M.G.L. c. 151, s. 1A. This Office will not adopt a "functional approach" that ignores this decision. Based on the information provided, it would appear that *** dock workers are not exempt from overtime under M.G.L. c. 151, s. 1A(8). ^[3]

I hope this information has been helpful. If you have any further questions, please feel free to contact me.

Sincerely,
Lisa C. Price
Legal Counsel

^[1] M.G.L. c. 151, s. 1A(8) 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."

^[2] The official title of the latter position is "freight handler/dock worker." A position description was provided in the materials submitted by ***.

^[3] The argument that *** dock workers perform their loading functions within the tractor-trailer units does not change the analysis. Loaders, by necessity, must perform their safety-affecting functions "on" trucks.

= Names have been Omitted