

## 12/16/02 - Minimum Wage Opinion Letter - **Applicability of M.G.L. c. 151, s. 1A(4) and (8)**

December 16, 2002

Your letter to the Office of the Attorney General has been forwarded to me for response. The Division of Occupational Safety, an agency under the state Department of Labor and Workforce Development, is responsible for responding to inquiries concerning the applicability of the Massachusetts Minimum Fair Wage Law, M.G.L. 151, and regulations promulgated thereunder. You have asked for a written opinion regarding the applicability of the state overtime law, M.G.L. c. 151, s. 1A, to one of your client companies. <sup>[1]</sup> Specifically, you have asked several questions about the overtime exemptions for outside salespersons (M.G.L. c. 151, s. 1A(4)), and drivers and helpers on trucks (M.G.L. c. 151, s. 1A(8)). As your questions concern separate overtime exemptions, I will address each in turn.

### Outside Sales Exemption

The Massachusetts overtime law, M.G.L. c. 151, s. 1A, applies to employees in an "occupation" as defined by M.G.L. c. 151, s. 2. Section 2 defines "occupation," in pertinent part, to exclude "outside sales work regularly performed by outside salesmen who regularly sell a product or products away from their employer's place of business and who do not make daily reports or visits to the office or plant of their employer." Outside salespersons are also specifically included in the enumerated exemptions from the state overtime law. M.G.L. c. 151, s. 1A(4).

As I understand it, your client employs outside salespersons to sell company products to grocery stores, convenience stores, and other similar retail establishments. Your clients' outside salespersons use hand-held computers to record orders that are transmitted electronically on a daily basis to the company's warehouse. You have asked for confirmation that the daily transmission of order information does not constitute a "daily report" for purposes of the overtime exemption. Your client's outside salespersons also attend a one to two-hour weekly sales meeting at a company warehouse. You have also asked for confirmation that this weekly meeting would not affect these employees' classification as outside salespersons.

The term "daily report" is not defined in the statute, and this Office is unaware of any court opinion that might provide guidance as to its meaning. In the absence of such guidance, it is left to this Office to give the language a reasonable interpretation. This Office will interpret "daily report" to mean reporting to the office or plant in person. <sup>[2]</sup> Therefore, daily electronic transmissions of sales orders do not constitute "daily reports" within the meaning of the statute.

As to the weekly sales meetings, this Office would consider such meetings incidental to and in conjunction with an employee's outside sales, as they would likely be treated under analogous federal law. See 29 C.F.R. s. 541.503. Therefore, attendance at such meetings would not affect the otherwise proper classification of an employee as an "outside salesman."

### Delivery Drivers

Your client also employs delivery drivers to transport products to the various retail establishments. Section 1A(8) of M.G.L. c. 151, 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." With respect to drivers or helpers on trucks, this exemption closely tracks an exemption found in federal minimum wage and overtime law, the Fair Labor Standards Act. Under federal law, it is "not material whether such qualifications and maximum hours of service have actually been established by the Secretary of Transportation; the controlling consideration is whether the

employee comes within his power to do so." <sup>[3]</sup> 29 C.F.R. s. 782.1. You have asked for confirmation that the Massachusetts overtime exemption would be interpreted in the same manner. Given the express language of the statute, the state exemption would similarly apply to drivers and helpers on trucks with respect to whom the Secretary of Transportation has the power to establish qualifications and maximum hours of service, regardless of whether or not that power has been exercised.

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

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<sup>[1]</sup> As I know you are aware, employers are also subject to the federal minimum wage and overtime laws, found in the Fair Labor Standards Act (FLSA) and regulations promulgated thereunder. For information about applicable federal wage and hour laws, you should contact the U.S. Department of Labor.

<sup>[2]</sup> It should be noted that this language pertaining to daily reporting appeared in the statute long before such electronic transmission was technologically feasible.

<sup>[3]</sup> The relevant functions, powers, and duties of the Interstate Commerce Commission were transferred to the Secretary of Transportation in 1966.

= Names have been Omitted