

## Minimum Wage Opinion Letter 02-26-02 - Applicability of M.G.L. c. 151, s.1A to Truck Loaders

February 26, 2002

I am writing in response to your letter requesting this Office's opinion regarding the applicability of M.G.L. c. 151, §1A(8) to an individual employed as a "truck loader/dock worker."

Generally, the Massachusetts Minimum Fair Wage Law, 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, with an important exception that will be discussed below, an exemption found in the federal minimum wage law, the Fair Labor Standards Act (FLSA). The FLSA exempts from the requirement to pay overtime "any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 31505 of Title 49." 29 U.S.C. §213(b)(1).

Section 1A was originally added to the Massachusetts Minimum Fair Wage Law in 1960. At that time, the FLSA exemption also referenced the Interstate Commerce Commission and the Motor Carrier Act of 1935. Since that time, the relevant functions, powers, and duties of the Interstate Commerce Commission were transferred to the Secretary of Transportation in 1966, and the relevant portions of Section 204 of the Motor Carrier Act of 1935 were codified at 49 U.S.C. 31502. As a result, the FLSA was amended to reflect these changes. While M.G.L. c. 151, §1A was not similarly amended, application of the exemption remains the same. The only substantive difference between the Massachusetts state exemption and the FLSA exemption - a difference that has existed since the state statute was amended to add Section 1A in 1960 - is in the employees covered by the exemption.

The FLSA exemption applies to "any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service." Generally, the federal exemption is applicable to:

those employees and those only whose work involves engagement in activities consisting wholly or in part of a class of work which is defined (i) as that of a driver, driver's helper, loader, or mechanic, and (ii) as directly affecting the safety of operation of motor vehicles on the public highways in transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act.

29 C.F.R. §782.2(b)(2) (citing Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695 (1947).) Each of these jobs - driver, driver's helper, loader, and mechanic - are defined in regulations promulgated under the FLSA. See 29 C.F.R. §§782.3-782.6.

The state exemption, M.G.L. c. 151, §1A(8), applies only to a subset of these workers: "a driver or helper on a truck." While the state statute includes no definitions of these terms, on its face, the exemption is clearly limited to workers "on" a truck, as opposed to those assisting in the loading or unloading. Also, given the similarity between the federal and state exemptions, it seems logical to apply the federal definitions of "driver" and "drivers' helpers" to the terms in Section 1A as well. 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). The federal definitions similarly distinguish between drivers' helpers and loaders.

Therefore, it is this Office's opinion that for an individual worker to be exempt from overtime compensation under M.G.L. c. 151, §1A, 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. If both criteria are met, the employer need not pay overtime compensation; if not, then overtime compensation is due to the worker. It would not appear that a "truck loader/dock worker" fits under either of these categories, but the character of activities involved in the performance of the work, rather than the position title, would be the controlling factor.

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

Sincerely,  
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Legal Counsel

= Names have been omitted