A Timely Analysis of Legal Developments

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A federal district court has held that individuals who drive both vehicles large enough to fall under the motor carrier exemption and smaller vehicles not falling under the exemption during the same workweek are entitled to overtime compensation under the FLSA.

Employers that Operate a Mixed Fleet of Vehicles May Lose the Motor Carrier Overtime Exemption

By Michael Gregg

A federal district court in New York recently issued a decision in *Hernandez v. Alpine Logistics, LLC*, 2011 U.S. Dist. LEXIS 96708, that requires employers to pay overtime compensation to employees who are otherwise exempt from overtime under the Motor Carrier Act for any workweek in which the employee operates a vehicle weighing 10,000 pounds or less. It is important that employers with a mixed fleet of vehicles review their classification decisions to assess any potential exposure the *Alpine Logistics* decision may present.

Background

The plaintiffs in *Hernandez* were employed as delivery drivers responsible for picking up and delivering packages in the Rochester, New York area. They filed a class action/collective action against their employer for overtime based on the Fair Labor Standards Act (FLSA) and New York Labor Law. Alpine's permanent fleet consisted of 26 vehicles, two of which weighed more than 10,000 pounds and 24 of which weighed 10,000 pounds or less. All of Alpine's drivers could be called upon to drive any of the vehicles. The plaintiffs claimed they and other drivers were entitled to overtime because of an amendment to the FLSA that became effective on June 7, 2008. The defendant argued that the drivers were exempt from overtime under the Motor Carrier Act.

Background on the Motor Carrier Exemption

The Motor Carrier Act provides an exemption from the maximum hours/overtime provisions of the FLSA. The scope of the exemption is defined by the jurisdiction that the Secretary of Transportation can assert under the Motor Carrier Act. 29 U.S.C. § 213(b)(1). The Secretary of Transportation has the power to regulate the qualifications and hours of employees of "motor carriers" and "motor private carriers" engaged in activities directly affecting the safety of motor vehicles in interstate commerce. 49 U.S.C. §§ 31501, 31502(b); *Baez v. Wells Fargo Armored Serv. Corp.*, 938 F.2d 180 (11th Cir. 1991).

On August 10, 2005, Congress passed the Safe, Accountable, Flexible, Efficient

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Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Pub. L. No. 109-59, 199 Stat. 1144 (2005). Section 4142 of the SAFETEA-LU amended 49 U.S.C. section 13102 so that "motor carrier" and "motor private carrier" were defined as a person providing transportation with a "commercial motor vehicle." In turn, "commercial motor vehicle" was limited to a vehicle with a "gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater." This amended definition effectively stripped the Secretary of Transportation of the power to regulate qualifications and maximum hours of service for drivers employed by motor carriers operating vehicles weighing less than 10,001 pounds and narrowed the Motor Carrier Exemption accordingly.

On June 6, 2008, Congress passed the SAFETEA-LU Technical Corrections Act (TCA). Pub. L. No. 110-244, 122 Stat. 1572 (2008). The TCA restored the definitions of the terms "motor carrier" and "motor private carrier" to their pre-SAFETEA-LU meanings. As a result, the Secretary of Transportation regained the power to exercise jurisdiction over the qualifications and maximum hours of service of drivers employed by motor carriers or motor private carriers operating vehicles with a weight of 10,000 pounds or less.

At the same time, however, the TCA retained the FLSA overtime protection for any "covered employee." The TCA defined "covered employee" as any individual "employed by a motor carrier or motor private carrier" whose duties, in whole or in part, are defined as a "driver, driver's helper, loader, or mechanic . . . affecting the safety of operation of motor vehicles . . . in interstate or foreign commerce . . . who performs duties on motor vehicles weighing 10,000 pounds or less."

Employees performing duties on vehicles designed or used to transport more than eight passengers for compensation, more than fifteen passengers and *not* for compensation, or material found by the Secretary of Transportation to be hazardous under 49 U.S.C. section 5103 were excluded from the definition of "covered employee."

The Court's Holding

The primary issue in *Alpine Logistics* was whether the individuals who drove both larger vehicles (10,001 pounds or more) and smaller vehicles (10,000 pounds or less) were "covered employees" and thereby entitled to overtime under the FLSA. The court pointed to Wage and Hour Division Fact Sheet # 19 issued by the Department of Labor in support of its holding that individuals who drove both larger and smaller vehicles during the same workweek were entitled to overtime compensation. The court held that the Motor Carrier Exemption does not apply to an employee in workweeks where the employee operates a smaller vehicle even if the employee also operates a larger vehicle during the same week. The court rejected the company's argument that Congress could not have intended to subject drivers to dual jurisdiction of the Department of Labor and Department of Transportation. The court held that the company's argument was inconsistent with the language of the TCA.

Implications of the Decision

The decision in *Alpine Logistics* may create added regulatory and recordkeeping obligations for companies with a mixed fleet of vehicles by subjecting employees to dual jurisdiction of the Department of Transportation and Department of Labor. Further, the decision conflicts with the general principle that the "[Motor Carrier] exemption is to eliminate any conflict between the Department of Labor's jurisdiction over the FLSA and the mutually exclusive jurisdiction exercised by the Department of Transportation over the MCA." *Glanville v. Dupar,* Inc., 2009 U.S. Dist. LEXIS 88408 (S.D. Tex. 2009). In *Collins v. Heritage Wine Cellars, LTD*, 589 F.3d 895 (7th Cir. 2009), for example, the court said "[d]ividing jurisdiction over the same drivers, with the result that their employer would be regulated under the Motor Carrier Act when they were driving the big trucks and under the Fair Labor Standards Act when they were driving trucks that might weigh only a pound less, would require burdensome record-keeping, create confusion, and give rise to mistakes and disputes."

The decision may also create additional financial burdens and exposure for companies with a mixed fleet of vehicles and adds further complexity to an already inconsistent approach taken by federal courts. *See, e.g., Dalton v. Sabo, Inc*., 2010 U.S. Dist. LEXIS 32472, at **11-12 (D. Or. 2010) ("even if each of these plaintiffs occasionally performed duties on vehicles weighing 10,000 pounds or less, 'when mixed activities occur, the Motor Carrier Act favors coverage.'"); *Hernandez v. Brink's, Inc*., 2009 U.S. Dist. LEXIS 2726, at **15-16 (S.D. Fla. 2009) ("when mixed activities occur, the Motor Carrier Act favors coverage of the employee during the course of employment."); *Vidinliev v. Carey Int'l, Inc*., 581 F. Supp. 2d 1281, 1293-94 (N.D. Ga. 2008) (exemption generally applies if some drivers operated larger

vehicles within four months of the pay period at issue and the plaintiff could have reasonably been expected to drive a larger vehicle); *Mayan v. Rydbom Express, Inc*., 2009 U.S. Dist. LEXIS 90525, at *31 (E.D. Pa. 2009) ("[a]n employee working on a 10,001 pound vehicle two days a week and a 5000 pound vehicle the remaining days of the week appears [to be entitled to overtime"]). The cases that allow the exemption when mixed activities occur seem to be more consistent with the intent of the Motor Carrier Act.

Given the patchwork of decisions on the applicability of the Motor Carrier Exemption when mixed activities are involved, employers with a mixed fleet of vehicles should review their classification decisions and vehicle assignments to assess any potential exposure the *Alpine Logistics* decision may present.

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