
29 C.F.R. § 782.7

Interstate commerce requirements of exemption.

(a) As explained in preceding sections of this part, section 13(b)(1) of the Fair Labor Standards Act does not exempt an employee of a carrier from the act's overtime provisions unless it appears, among other things, that his activities as a driver, driver's helper, loader, or mechanic directly affect the safety of operation of motor vehicles in transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act. What constitutes such transportation in interstate or foreign commerce, sufficient to bring such an employee within the regulatory power of the Secretary of Transportation under section 204 of that act, is determined by definitions contained in the Motor Carrier Act itself. These definitions are, however, not identical with the definitions in the Fair Labor Standards Act which determine whether an employee is within the general coverage of the wage and hours provisions as an employee "engaged in (interstate or foreign) commerce." For this reason, the interstate commerce requirements of the section 13(b)(1) exemption are not necessarily met by establishing that an employee is "engaged in commerce" within the meaning of the Fair Labor Standards Act when performing activities as a driver, driver's helper, loader, or mechanic, where these activities are sufficient in other respects to bring him within the exemption. (*Hager v. Brinks, Inc.* (N.D. Ill.), 11 Labor Cases, par. 63,296, 6 W.H. Cases 262; *Earle v. Brinks, Inc.*, 54 F. Supp. 676 (S.D. N.Y.); *Thompson v. Daugherty*, 40 F. Supp. 279 (D. Md.). See also, *Walling v. Villaume Box & Lbr. Co.*, 58 F. Supp. 150 (D. Minn.). And see in this connection paragraph (b) of this section and § 782.8.) To illustrate, employees of construction contractors are, within the meaning of the Fair Labor Standards Act, engaged in commerce where they operate or repair motor vehicles used in the maintenance, repair, or reconstruction of instrumentalities of interstate commerce (for example, highways over which goods and persons regularly move in interstate commerce). (*Walling v. Craig*, 53 F. Supp. 479 (D. Minn). See also *Engbretson v. E. J. Albrecht Co.*, 150 F. (2d) 602 (C.A. 7); *Overstreet v. North Shore Corp.*, 318 U.S. 125; *Pedersen v. J. F. Fitzgerald Constr. Co.*, 318 U.S. 740, 742.) Employees so engaged are not, however, brought within the exemption merely by reason of that fact. In order for the exemption to apply, their activities, so far as interstate commerce is concerned, must relate directly to the transportation of materials moving in interstate or foreign commerce within the meaning of the Motor Carrier Act. Asphalt distributor-operators, although not exempt by reason of their work in applying the asphalt to the highways, are within the exemption where they transport to the road site asphalt moving in interstate commerce. See *Richardson v. James Gibbons Co.*, 132 F. (2d) 627 (C.A. 4), affirmed 319 U.S. 44 (and see reference to this case in footnote 18 of *Levinson v. Spector Motor Service*, 330 U.S. 649); *Walling v. Craig*, 53 F. Supp. 479 (D. Minn.).

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