

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
LEGAL SECTION
45 Fremont Street, Suite 3220
San Francisco, CA 94105
(415) 975-2060



SUSAN A. DOVI, *Staff Counsel*

July 10, 1996

Donald N. Hubbard
Law Offices of Donald N. Hubbard
2100 Garden Road, Suite F
Monterey, CA 93940

Dear Mr. Hubbard:

Your letter to H. Thomas Cadell dated June 28, 1996 has been forwarded to me for response.

Your question is whether your client is obligated to pay overtime pay to his drivers. Under the facts provided in your letter it appears that your client's vehicles are over 10,000 lbs. and are described as tank trucks which pump waste from portable toilets and deposit that waste at a waste water facility. For purposes of this opinion I will assume that the vehicles in question are two-axle trucks of between 10,000 and 26,000 lbs.

Industrial Welfare Commission Order 9-90 provides at Section 3 (H) that the overtime provisions:

...are not applicable to employees whose hours of service are regulated by (1) the United States Department of Transportation Code of Federal Regulations, Title 49, Section 395.1 to 395.13, Hours of Service of Drivers, or (2) Title 13 of the California Code of Regulations, Subchapter 6.5, Section 1200 and following sections, regulating hours of drivers.

Recently our office has had a number of inquiries regarding the exemption. In an attempt to provide the appropriate guidance on this issue we have found it necessary to issue a memo which addresses exemptions created because either the CHP, the PUC, or the DOT regulates the hours of service of the drivers of two axle trucks of less than 26,000 lbs.

It appears from the facts you have presented that your client would not fall within the Department of Transportation regulations because the vehicles do not cross state lines. Therefore, I will address the regulations under Title 13 of the California Code of Regulations, Subchapter 6.5, Section 1200 et seq.

1996.07.10

While I agree with your interpretation that by not amending the exemption in 1990, the Industrial Welfare Commission intended for the exemption to be fully effective as of 1990, I disagree with your conclusion that your client's vehicles fall within that exemption.

The scope of the regulations defined in §1200 indicates that the regulations in chapter 6.5 regulate the hours of drivers of 1) farm labor vehicles 2) vehicles listed in Vehicle Code Sections 34500 and 34500.1 and 3) limited application to two-axle trucks of 26,000 lbs. or less transporting hazardous materials.

Two-axle trucks are regulated in 4 subsections of §34500 of the Vehicle Code. Those subsections include (f) two axle trucks connected to a regulated trailer or semitrailer so that the combination exceeds 40 feet in length; (g) two-axle trucks transporting any hazardous material or towing a trailer transporting hazardous material; (k) two-axle trucks with a gross vehicle weight of 26,001 or more pounds, and any two-axle truck towing any regulated trailer/semitrailer with a gross vehicle weight rating of more than 10,000 pounds; and (j) two axle trucks regulated by the PUC. This last subsection would include for-hire vehicles such as airport shuttle vans whose operators are required to possess operating authority.

Therefore, our Division will enforce the overtime provisions of the wage order for all two-axle trucks that are not regulated by the Department of Transportation and two-axle trucks of less than 26,000 lbs. except for those two-axle trucks that:

1. Transport hazardous material;
2. Tow a regulated trailer or semitrailer with a combined length of 40 feet;
3. Tow a regulated trailer or semitrailer with a gross vehicle weight of 10,000 lbs;
4. For hire vehicles requiring operating authority from the PUC. For hire vehicles are vehicles that transport goods or passengers for compensation. Examples are Airport shuttles, hotel/motel shuttles, etc.
5. Farm Labor Vehicles.

You indicate that your client's vehicles are registered with the PUC and the CHP. The operative inquiry is whether the PUC or the CHP regulate the hours of service of the drivers. We have contacted both agencies and determined that the PUC and CHP regulate the hours of service of drivers of vehicles in the above categories only. Therefore, it is irrelevant that your client is or has been registered with either agency in the past.

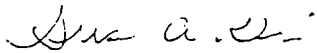
It appears under the facts as presented by you that the exemption would not apply to your client's situation.

1996.07.10

July 10, 1996
Page 3

I hope that you find the above helpful.

Sincerely,



Susan A. Dovi
Attorney for the
Labor Commissioner

cc: Mike Meuter, Esq.

1996.07.10