

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

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H. THOMAS CADELL, *Of Counsel*

December 13, 2002

Cody Jaffe, Esq.
Jackson Lewis Schnitzler & Krupman
199 Fremont St., 10th Floor
San Francisco, CA 94105

Re: **Application Of Overtime Laws To Limousine Drivers** (00177)

Dear Ms. Jaffe:

I have been requested to respond to your letter to Anne Stevason, Chief Counsel of DLSE, regarding the above-referenced matter.

Your letter requests the Division's opinion on whether a limousine service's drivers who are dispatched to pick-ups at pre-arranged locations and times would be exempt from the overtime requirements of the IWC Order (Order 9-2001). The drivers pick up the passengers and their luggage and take them to their desired location. The majority of the trips involve taking passengers to or from an international airport for often out-of-state flights, however, all the company's transport occurs within the State of California. Your letter states that the company operates under a license issued by the United States Department of Transportation, but you do not explain this "licensing" requirement further.

You conclude that the above-described drivers would be exempt from the overtime provisions of the California IWC Orders based either on the exemption for taxicab drivers or the exemption for employees whose hours are regulated by the U.S. Secretary of Transportation (49 C.F.R. 395.1-13)

It is not clear from your letter whether your client's activities are regulated by the Public Utilities Commission or by a local authority. From the description you give, we assume that your client would be subject to the charter-party carrier regulations of the California PUC. (§§ 5351- 5419, Pub.Util. Code) If this is so, that Commission has forbidden those so regulated from engaging in taxicab transportation service.

2002.12.13

Taxicab Driver Exemption

IWC Order 9-2001, Section 3(M) provides:

"The provisions of this section shall not apply to taxicab drivers."

The term "taxicab drivers" is not defined in the IWC Orders. Typically, the term "taxicab" is defined by the local ordinance which regulates their operation. Generally, the term is understood to mean a vehicle that is devoted to carrying passengers which charges by way of a meter¹ for the service. Taxicabs are permitted to cruise the streets to pick-up fares at will. The fact that taxicab drivers are free to "roam", thus limiting the control of the employer², coupled with the fact that taxicab drivers have historically been paid on a percentage of the meter and not on the number of hours worked, are the primary reasons for the exception of taxicab drivers from the overtime provisions in the IWC Order.

Unlike taxicab drivers, limousine drivers are not allowed to pick up fares at random but, instead, carry passengers only by pre-arrangement typically setting the price of the use of the limousine before the trip begins. Thus, the limousine driver is subject to much more control by the employer than is the taxicab driver. In addition, of course, when construing remedial legislation, exceptions are to be very narrowly construed. If the IWC had wished to exempt limousine drivers as well as taxicab drivers they could easily have said just that.

Additionally, the fact the Legislature has chosen to deregulate most transportation services (including taxicabs) except for limousines (Pub.Util. Code § 5353.5) is further evidence of the fact that there is a recognized difference between taxicabs and limousines.

Absent some compelling rationale for including the limousine drivers employed by your client within the definition of taxicab drivers, DLSE would opine that the described employees would not be exempt from the overtime provisions of Order 9-2001 due to the taxicab exemption.

¹As we point out, it is not clear whether your client is subject to the regulation of the California PUC, but if so, the Commission prohibits charter-party limousines from having a "taxi meter".

²Another class of employees which have been exempted is the outside salesperson. The reasons for the exemptions are, of course, similar.

The Provisions Of Section 3(L) (1) Of Order 9-2001

"(L) The provisions of this section 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, Sections 395.1 to 395.13, Hours of Service of Drivers..."

The pertinent federal regulations define a commercial motor vehicle as:

"...a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle--

"(a) Has a gross combination weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or

"(b) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 pounds or more); or

"(c) Is designed to transport 16 or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 C.F.R. part 172, subpart F).

Unless the limousines driven by the employees of your client meet any of these definitions, they are not exempt from the overtime requirements of California law based on the provisions of Section 3(L) (1) of Order 9-2001.

Inasmuch as we seriously doubt that the limousines would meet the specifications in the definitions set out above, we do not believe that a further discussion of the federal pre-emption issue would be informative. However, we would point out that both the California and the federal courts have consistently held that simply being engaged in interstate commerce or being subject to the regulation of a federal agency does not result in an employee being exempt from state minimum standards. (*Cf. Pacific Merchant Shipping v. Aubry* 918 F.2d 1409 (9th Cir. 1990)

2002.12.13

To summarize: DLSE does not believe that the drivers described in your letter would be exempt from the California overtime requirements under either the "taxicab" exemption or the exemption provided for drivers whose hours are regulated by 49 C.F.R. Parts 395.1 through 395.13.

Thank you for your continued interest in California labor law.

Yours truly,



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2002.12.13