

DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT

## LEGAL SECTION

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December 3, 2001

Frank A. Sanderson  
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Redding, California 96049

Re: Exclusion of Log Truck Drivers from IWC Order 16

Dear Mr. Sanderson:

Please excuse our delay in responding to your letters of September 28, 2001 and November 5, 2001 concerning the issue of whether log truck drivers are covered by Industrial Welfare Commission Order 16-2001, or by Order 9-2001.

We start with the express language of the wage orders. The applicability of Order 16 is set out in paragraph 1 of that Order as follows: "This order shall apply to all persons employed in the on-site occupations of . . . logging work for which a timber operator's license is required pursuant to California Public Resources Code Sections 4571 through 4586. . . ." Paragraph 2(K) defines "logging occupations" as "any work for which a timber operator's license is required pursuant to California Public Resources Code Sections 4571-4586, including the cutting or removal or both of timber or other solid wood forest products, including Christmas trees, from timberlands for commercial purposes, together with all work that is incidental thereto, including but not limited to construction and maintenance of roads, fuel breaks, fire breaks, stream crossings,, landings, skid trails, beds for the falling of trees, and fire hazard abatement."<sup>1</sup> Returning to Paragraph 1, subsection (F) provides that Order 16 "supersedes any industry or occupational order for those employees employed in occupations covered by this order."

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<sup>1</sup> This definition parallels the definition of "timber operations" found at Section 4527 of the Public Resources Code, and under section 4571 of that Code, no person shall engage in such operations without a timber operators license. The Department of Forestry and Fire Protection is responsible for licensing timber operators.

2001.12.03

Prior to the adoption of Order 16-2001, log truck drivers (like any other commercial vehicle drivers) were unquestionably covered by Order 9, which applies to all persons employed in the "transportation industry," defined to include: "any industry, business or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith . . . ." (Order 9-2001, para. 2(N)) But in view of the breadth of the "supersession provision" of paragraph 1(F) of Order 16-2001, continued coverage under Order 9 would require a finding that log truck drivers are not employed in an occupation covered by Order 16.

By letter dated July 27, 2001, we sought advice from the California Department of Forestry and Fire Protection ("CDF") as to the following questions:

1. Whether the hauling of logs from the area of logging operations to an off-site lumber mill or co-generation plant constitutes the "removal . . . of timber . . . from timberlands" or "work that is incidental thereto," within the meaning of section 4527 of the Public Resources Code, so as to require licensure under section 4571?

2. Whether the answer to question 1, above, depends on whether the hauling is performed by the same business that cut the timber, as opposed to an independent trucking company?

3. And if the work described in question 1, above, does not fall within the meaning of "timber operations" under section 4527, what operations are covered by the phrase "removal . . . of timber . . . from timberlands" or "work that is incidental thereto," so as to require licensure under section 4571.

The CDF responded to us by letter dated October 1, 2001, stating that "the isolated act of trucking in and of itself does not require an individual to be a licensed timber operator (LTO). This is not dependent on whether the hauling is performed by the same business that performs the actual logging company, as opposed to an independent trucking company." According to the CDF, "the phases of logging that constitute "timber operations" under Public Resources Code section 4527 "include, but [are] not necessarily limited to, the tree cutting, log skidding [getting the log from the cut to the truck], slash treatment, erosion control, silviculture, and road building." The CDF distinguished these operations from driving a log truck, observing "[w]hen logs have been loaded on to the log truck, we believe the need for a license has ceased. . . . We do not see how licensing log truckers would further the purposes of the [Forest Practice] Act."

To ensure that the IWC, when it adopted Order 16-2001, shared the CDF's view as to whether log truck drivers fall within the definition of "logging operations," we looked to the Statement as to the Basis of Order 16. Although the Statement does not provide conclusive guidance on this issue, it is interesting to note that the Statement contains this language in discussing the applicability of the Order: "The IWC notes that this Order is intended to cover construction workers regardless of whether or not their employers are required to possess a contractor's license." In contrast to this expansive coverage of on-site construction workers, the Statement notes that the Order covers "logging work for which a timber operator's license is required pursuant to California Public Resources Code §§4571 through 4586, whether said workers are paid on a time, piece rate, commission or other basis."

Finally, we looked at the Report of the Wage Board for On-Site Construction, Drilling, Logging and Mining Industries, covering the proceedings of this Wage Board held on June 20 and July 20, 2000. This is the Report that was presented to the IWC, that led to the IWC's adoption of Order 16-2001. The Wage Board proposal regarding paragraph 1 ("applicability") and paragraph 2 ("definitions") of Order 16 was approved by the Board in a 17 to 4 vote. The above-described provisions now found in Order 16-2001 were first debated over and approved by the Wage Board. Consequently, the Wage Board's discussion of this issue is critical in understanding the IWC's intent, and thus, in determining how the Division of Labor Standards Enforcement (DLSE) should be enforcing the wage order.

During the Wage Board discussion, Employer Representative Mike Anderson clarified that the definition of "logging occupations" applies only to cutting and removal of trees on-site, not to transportation or delivery from the site of the logging operations. Mr. Anderson noted that another wage order (Order 9) would apply to any off-site transportation. Employee Representative Scott Wetch stated that the intent was that Order 16 only apply to on-site occupations. The Board then agreed to include the term "on-site" in the title of the wage order, so as to make this intent clear.

There can be no doubt, in view of this regulatory history, that log truck drivers are covered by Wage Order 9-2001, not by Order 16-2001. As such, these drivers are subject to the exemption from overtime set out in paragraph 3(L) of Order 9-2001.<sup>2</sup> Please note, however, that these drivers would be covered by all other sections of Order 9, including requirements for meal

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<sup>2</sup> That exemption provides that the provisions of paragraph 3, including daily overtime, are not applicable to drivers whose hours of service are regulated by 49 CFR sections 395.1 to 391.13 or by 13 CCR section 1200, et seq.

periods and rest periods, and payment of wages for all hours worked.

As you are aware, during our investigation of this issue, former chief counsel Miles E. Locker directed DLSE staff to suspend all enforcement with regard to log truck drivers' overtime claims, to the extent that such drivers are covered by the drivers' exemption in Order 9. This letter will be circulated to DLSE staff to ensure that any such pending claims are dismissed.

Thank you for your interest in California wage and hour law. Feel free to contact us with any other questions.

Sincerely,



Anne Stevason  
Acting Chief Counsel

AS/ml

cc: Stephen Smith  
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