

# The Motor Carrier Exemption: A Unique Alternative for Employers Wanting to Pay Truck Drivers Salaries Instead of Overtime

*Amundsen Davis Transportation Alert*

September 9, 2016

We won summary judgment for a vending operator based in Miami. The route driver employee alleged he was entitled to receive overtime pay because he was a non-exempt employee under the Fair Labor Standards Act (FLSA). We argued he was exempt from overtime as he fell under the Motor Carrier Exemption (MCE), which exempts those employees who transport people or goods in interstate commerce from FLSA's overtime pay requirements.

Plaintiff, whose vending routes were only in Florida, argued that since the out-of-state vending goods he put in the machines stopped at local Florida storage hubs (distributors) before coming to his warehouse, that the distributor stop broke the interstate commerce flow of the out-of-state goods and thus the MCE did not apply. Therefore, he argued he was owed overtime pay.

The company contested this position, arguing that because the distributor was a temporary stop and the goods had not yet come to rest, the goods remained in interstate commerce. The court agreed with the defense, finding that it could legally pay him a salary each week with no overtime component.

## **Practice Tips:**

In order for the MCE to apply, the driver must drive a vehicle that has a Gross Vehicle Weight Rating (GVWR) of 10,001 pounds or above and either have a route that crosses state lines or transports out-of-state goods that do not "come to rest" in a warehouse before being transported to the applicable customers vending machines. The latter component is vitiated if the out-of-state goods are "commissary goods" and get dismantled and pre-packaged at the warehouse (i.e., the bread, lettuce, mayo and deli meat all come from out of state but they are made into sandwiches at the warehouse before the driver takes the goods to the customer).

## **PROFESSIONALS**

Heather A. Bailey  
Partner

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Moreover, it is beneficial to have a system in place that denotes each customer's product usages so that when the vending orders are placed, the company is basing that order per the specific customers and their needs. Whenever you are dealing with an employee's pay, it is always best to check with your employment counsel to confirm your payment method is in line with the applicable federal and state wage and hour laws.

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