



Rollin' On [®]



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STRIKES, OVERTIME PAY, AND CARGO INSURANCE

Strike mania

Although the dock strike is over, the mess created by the strike still remains. There is still a logjam in the ports, which can take another couple of months to process. Contracts and contacts have been forever lost. Some businesses may never recover from the work stoppage.

Meanwhile, the Teamsters have broken off talks with LTL carriers in regard to the National Master Freight Agreement and have called for a strike vote. Just what the country needs.

At least the Transportation Security Administration has adopted an order that precludes the use of collective bargaining for airport security screeners. The rationale is that dealing with terrorist threats can mean changes in work assignments that are not compatible with the duty to bargain with labor unions. As if shutting down the West Coast to placate a handful of people is conducive to the national interest.

It's not often that one looks to the government for guidance on these issues. Then again, it's not uncommon for Congress to pass a law that applies to everyone else except to itself.

Motor carriers:

Overtime pay for whom?

The Fair Labor Standards Act provides payment of overtime when the typical employee works beyond the typical work day. However, it provides an exemption for certain employees whose employment involves activities are related to interstate commerce. A clear example is a truckdriver who crosses state lines on a daily basis. The driver does not receive overtime compensation due to this exemption. To be sure, many truckdrivers struggle

The Obligatory Disclaimer

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to get by with what they are paid. There is a certain amount of fudging with log books that occurs due to this fact, although some fudging is simply due to the desire to earn more \$\$.

The question thus arises, what employees are exempt from the payment of overtime wages? The federal regulations provide some guidance, whether right or wrong. The regulations provide that drivers, drivers' helpers, loaders and mechanics may be exempt from the payment of overtime. The regulations also provide that employees such as dispatchers are not exempt, as they are supposedly not involved in safety-related activities.

However, there are court cases that emphasize that the pertinent question is whether DOT has the right to regulate the activities of the employee, regardless of whether DOT actually regulates the activities of the employee. The statute empowering DOT is very broad, stating that DOT may prescribe the requirements for qualifications and hours of service for employees of motor carriers. One recent court case involved a route salesman for a laundry and uniform rental sales and services company. The salesman's route was entirely within Oregon. The federal appellate court held that since DOT had the authority to prescribe requirements for that employee's hours of service, the route salesman was not covered by the FLSA and that the salesman was exempt from mandatory overtime pay.

Under that rationale, it could be argued that dispatchers would be

exempt, since a dispatcher would certainly be more involved in a motor carrier's activities than a route salesman could ever be. The regulations focus on whether the employee is involved in safety-related activities, while the statute is not so limited. You thus end up with conflicting court decisions, which is not helpful to business.

Cargo Insurance:

Dollars actually payable

Motor carriers frequently carry cargo insurance, although by law they are not always required to do so. Of course, the list of exclusions to those policies is often so extensive that one is left to wonder what is actually covered. The failure to tarp is a favorite exclusion. Insurance companies don't want to be tagged for the failure of the driver to tarp a load, and thus this type of damage is frequently not covered.

However, if the insurance company has filed a certain kind of endorsement with the federal government on behalf of the motor carrier, those exclusions do not apply for the first \$5,000, or \$10,000 in certain circumstances, and the shipper can file a claim for tarp-related damage, or other damage, notwithstanding any such exclusions. The insurance company is required to pay the shipper, and then go back to its motor carrier/policyholder, if it is still operating, to get reimbursed. The \$5,000 may not go very far, but it's better than nothing.

Switch to email

Just email me your company name and fax number where **Rollin' On** is currently being received, and you'll be switched over.

That's all for now. Until next time, keep the cargo *rollin'!*

Short Bio

Admitted to the state bars of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 25 years and emphasizing transportation law, business law and related litigation.