

Memo: Overtime Pay for Truck Drivers in Minnesota
To: Bob Krogman
From: Libby Law Office
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The purpose of this memo is to discuss whether jobbers employing drivers who haul hazardous materials in transports that are placarded or weigh more than 10,000 pounds, must pay overtime to the drivers.

The federal **Fair Labor Standards Act (FLSA)** wage and hour law mandates a 40 hour work week as the maximum time an hourly employee may be paid regular wages. After 40 hours, hourly workers must be paid overtime, which is one and one half the regular hourly rate. There is no federal provision that requires employers to pay at double or triple rate for overtime or for holiday hours.

The **Minnesota Fair Labor Standards Act** dictates that overtime begins to accrue when an employee reaches 48 hours in a week. Employers must pay “no less than 1 1/2 times” the employee’s hourly wage.

The law also requires that employers use the most advantageous system to the employee. In nearly all cases, the federal system of the 40 hour work week will be the most advantageous for employees, thus the federal law will be the law employers use for most hourly workers.

Federal law exempts certain classes of workers from overtime under the FLSA. Included in this overtime exemption are drivers who come under the authority of the United States Department of Transportation (USDOT/Motor Carrier Act). The Motor Carrier Act allows the overtime exemption to ensure safe operation on public motorways. Minnesota law incorporates this same overtime exemption from the 40 hour limit for drivers falling under the authority of the Motor Carrier Act.

Minnesota federal district court has adopted a five point test that will help employers determine whether an employee must be paid overtime or if the driver is exempt from overtime via the Motor Carrier Act’s exemption for overtime:

1. The person transports property by commercial motor vehicle (vehicle with a gross vehicle weight (GVW) of more than 10,000 pounds);
2. The person was engaged in interstate commerce;
3. The person was the owner, lessee, or bailee (common carrier) of the property being transported;
4. The property was being transported for sale, lease, rent, or bailment or to further a commercial enterprise; **and**
5. The person had some effect on the vehicle’s safety of operation (driver).

Minnesota Department of Transportation (MNDOT) states that an employer is subject to the federal Motor Carrier Act (meaning overtime exemption) to include, in relevant part, vehicles that are:

1. Over 10,000 pounds GVWR operating in interstate commerce;
2. Over 10,000 pounds GVW or GVWR operating in intrastate commerce; **or**
3. Any size vehicle transporting hazardous material of a type or quantity that requires the vehicle to be placarded.

It becomes clear when looking at either the federal law or the state law jobbers who employ drivers who haul hazardous materials, are placarded in transports that weigh more than 10,000 pounds do not have to pay overtime to the drivers.