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Dispatchers and Overtime: Forty Miles of Bad Road

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The latest threat to the transportation industry is not rising fuel costs or clogged highways, but rather, the inevitable wave of lawsuits by dispatchers claiming that they are entitled to overtime pay. Such lawsuits have the potential to be exceptionally dangerous since transportation employers typically classify dispatchers as exempt from overtime and then require the employees to work well over 40 hours in a week. Although the employer may treat dispatchers as exempt, the employee(s) may still claim they are entitled to overtime pay because they are misclassified. This is a serious problem because federal law imposes very harsh penalties on employers who fail to properly pay overtime.

Employees can prosecute these claims through the Department of Labor. Or, worse for employers, they can file suit in federal and/or state court, claiming overtime for themselves and other dispatchers with the company -- the dreaded class action. In the past several years, there have been a number of such class actions filed by dispatchers against motor coach companies. I have defended a number of these dispatcher overtime claims, and although I have been successful, the decisions could have just as easily gone against the employer.

The cost of losing an overtime claim is steep for employers. Under federal law, an employee may recover unpaid overtime, liquidated damages in an amount equal to the unpaid overtime (i.e. double damages) and attorneys' fees. If the Department of Labor uncovers even a single violation, it may conduct an audit of all dispatchers or the entire company. The limitations period runs two years prior to the date the complaint is filed (counting backwards), except in the case of a willful violation when it is extended to three years.

If the employer goes to trial and loses, it must pay the attorneys' fees for the plaintiffs, which could total $100,000 or more. This stark fact puts tremendous pressure on employers to settle cases, especially if the evidence of exempt status is not persuasive. The only employer defense is that the employees are exempt under one of two federal law exemptions.

The first defense, the executive exemption, applies to any individual employed in a supervisory capacity. Generally, truck dispatchers' primary duty is the routing of drivers and trucks, not managing a department, and would thus lack sufficient management authority. The authority to hire and/or fire is essential for the executive exemption. If dispatchers do not have the authority to hire or fire drivers, and lack authority to make other "change of status" determinations, they are (again) not exercising management duties. Although dispatchers may have the authority to write employees up or document infractions of company policy, if the discipline is decided upon by the terminal manager, safety manager, etc., this will not be considered sufficient supervisory authority to meet the exemption.

The second defense is that the dispatchers are exempt under the administrative exemption. This defense hinges on whether the employee's duties involve the "exercise of discretion and independent judgment." This means evaluating options and then making decisions. If dispatchers only follow standardized procedures, then a court will likely find that the employees do not exercise discretion and are therefore non-exempt. As one can imagine, it is highly subjective and fact intensive analysis.

The danger is real; the threat exists. Yet, through proactive strategizing, an employer may endow dispatcher employees with the requisite duties, responsibilities and freedom of action (i.e. discretion and independent judgment) that will qualify them for exemption under the FLSA and state laws. The real danger lies in doing nothing and waiting for the time bomb to explode, because it will.

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