LEGAL UPDATE

DOL Withdraws 2019 Guidance for Compensable Time in Sleeper Berths

On Feb. 19, 2021, the U.S. Department of Labor (DOL) withdrew opinion letter FLSA2019-10 to revert to its previous, more employee-friendly guidance on how to determine whether time drivers spend in a sleeper berth is compensable under the Fair Labor Standards Act (FLSA).

The Rescinded Guidance

The DOL issued FLSA2019-10 because the agency viewed its prior guidance as overly burdensome to employers. The rescinded guidance favored an "on duty" analysis to determine whether time spent in a sleeper berth was compensable.

However, this approach met a lot of resistance and, under the new Biden Administration, the DOL determined the letter's interpretation was inconsistent with longstanding FLSA interpretations for this issue, noting that several courts had declined to follow the letter.

The Reinstated Guidance

The withdrawal of FLSA2019-10 reinstates previous DOL guidance which is based on whether time spent in a sleeper berth can be classified as non-working traveling time. Travel time is not compensable if:

- The employee was not working while riding;
- The employee was allowed to sleep in adequate facilities furnished by the employer (such as a sleeper berth); and
- Sleeper berth periods were sufficiently long to allow the employee to use his or her time for the intended purpose.

The DOL has also interpreted travel time regulations to mean that employers can only exclude up to eight hours of sleeping time in a trip that is at least 24 hours long and no sleeping time could be excluded for trips under 24 hours.

Impact on Employers

- ☑ This DOL shift on the test it uses to determine whether sleeper berth time is compensable may have a significant effect on timekeeping policies and compensation practices.
- ☑ Motor carriers and other institutions that employ truck drivers should review their policies and procedures to ensure that they are compensating their drivers as required by the FLSA.

The DOL withdrew FLSA2019-10 because it concluded the letter was inconsistent with longstanding FLSA interpretations.

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