
MEMORANDUM

TO: Clients

FROM: David A. Rosenfeld
drosenfeld@unioncounsel.net
Caren Sencer
csencer@unioncounsel.net

DATE: December 24, 2018

1

SUBJECT: FMCSA Preemption of Meal and Rest Breaks

As some of you may know the Federal Motor Carrier Safety Administration fast tracked a request by the American Trucking Association and other employer groups to rule that California's meal and rest break laws are preempted by the federal law. In particular the question was whether the hours of service requirements preempt state law requirements for lunch periods and rest breaks for commercial drivers.

The Petition was filed on September 24 and a mere 4 days later the FMCSA asked for public comments. The comment period closed shortly thereafter and the FMCSA issued its ruling on December 21 holding that the meal and rest break requirements are preempted as to commercial motor vehicles governed by the FMCSA. The ruling only applies to carriers of property but the FMCSA invited the same petition for passenger carriers. Although it applies only to California it will have the same effect on other state laws regarding meal and rest periods.

This is not the end of the story because there will likely be appeals to the courts on this issue. The Ninth Circuit ruled several years ago that the rules were not preempted in a case which has been followed by the courts. *Dilts v. Penske Logistics*, 757 F. 3d 1078 (9th Cir 2014). The FMSCA had also issued a ruling in 2008 finding that the meal and rest break provisions were not preempted. Thus the new ruling overturns a prior ruling of the same agency and is contrary to the ruling of the federal court which governs California.

This is a nice holiday gift to trucking employers. It was also announced before a long weekend to avoid publicity.

Union employers cannot make unilateral changes in “wage hours and other terms and conditions of employment.” This determination does not modify your collective bargaining agreement nor does it make meal and rest periods illegal such that any severance language (governing the circumstances where a provision is determined to be illegal) can be used by the employer. If any unionized employer takes the position that meal and rest breaks do not apply, the Union should object and take the position that the courts have ruled to the contrary and that the employer may not make changes without bargaining or make any changes which violate the agreement.

If any of you want to read this outrageous ruling it can be found here:

<https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/regulations/440601/california-meal-and-rest-break-rules-preemption-determination.pdf>

Again this is not the end of this fight. Call us with any questions.