

**Tip of the Week**  
**P•A•S ASSOCIATES**  
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**Federal Overtime May Apply to Truck Driver  
Exempt from State Rule**

*As a follow-up to the March 14 "Labor Law Corner," can an intrastate truck driver be exempt from California overtime but still be subject to federal overtime?*

Yes, this is a possibility. In some instances an intrastate driver who is not subject to the U.S. Department of Transportation (DOT) hours of service regulations and meets all the criteria to be exempt from California overtime, pursuant to the Industrial Welfare Commission Orders 1 to 10, 13 and 14, may be subject to federal overtime in accordance with the Fair Labor Standards Act (FLSA).

**Eligibility**

Determine whether the business or individual is subject to the FLSA. The majority of businesses in California are covered by FLSA. Coverage occurs in two ways:

- An entire "enterprise" (business) may be covered if it meets certain tests. If the FLSA covers an enterprise, it covers all employees of the enterprise.
- Even if an enterprise does not meet those tests, there may be "individual" coverage of certain employees. See the CalChamber's "FLSA Worksheet — Determining Coverage" (available at [www.hrcalifornia.com](http://www.hrcalifornia.com)) to assist in concluding whether your business is covered by the FLSA. If coverage exists, overtime payment is required for all hours worked beyond 40 in a workweek unless there is a specific exemption, such as the truck driver exemption.

**Interstate Commerce**

The definition of interstate commerce pursuant to the FLSA is much broader than the DOT definition. An employer may not meet the interstate commerce definition for the purpose of DOT coverage, but may meet the definition of interstate commerce pursuant to the FLSA.

Confirm whether the driver is subject to DOT regulations even though the truck operates solely within the borders of California.

In addition to covering transport of property between two states, the DOT definition of "interstate commerce" includes transport of property within one state if the transport is part of a flow of property across state lines.

If the driver is not subject to DOT regulations, the federal overtime exemption does not apply and the FLSA requires that premium pay in excess of 40 hours be paid.

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