

## LABOR & EMPLOYMENT LAW — 1/23/08

### Trucker hours-of-service rule makes roads less safe, appeals court told

The Bush administration broke the law again when it reinstated an hours-of-service rule for truck drivers that is making highways more dangerous, the **Advocates for Highway and Auto Safety** told the DC Circuit Court of Appeals last week. The group was in court fighting an interim final rule issued by the Federal Motor Carrier Safety Administration (FMCSA) in December--in violation of a court order, according to the Teamsters union, which has teamed up with safety group to combat the hours-of-service rule.

Truck drivers will be limited to driving only 11 hours within a 14-hour duty period, after which they must go off duty for at least 10 hours under the interim rule, made public on December 11. According to the FMCSA, the rule was developed after new data showed that safety levels have been maintained since the 11-hour driving limit was first implemented in 2003. The 11-hour driving maximum is one hour more than was allowed previously. It also allows drivers to work as many as 84 hours a week, which the union contends could lead to dangerous fatigue.

A reply brief filed last Thursday refutes FMCSA's argument that the rule has improved highway safety. The National Highway Traffic Safety Administration recently reported that deaths in truck accidents increased in 2004 and 2005. The percentage of fatal crashes that result from driver fatigue rose 20 percent from 2004 to 2005. "Because 2004 was the first year in which the new, longer hours of driving and work were put into effect, the negative impact is obvious," the brief states. In addition, FMCSA has acknowledged in the past that the risk of a crash doubles from the 8th hour to the 9th hour of driving, and doubles again from the 10th to the 11th hour.

The hours-of-service rule has twice been thrown out by a court. FMCSA first promulgated the regulation in 2003, increasing the number of hours truckers can drive. The Court of Appeals for the DC Circuit struck down the rule in 2004, but Congress reinstated it as part of the Surface Transportation Extension Act of 2004.

FMCSA issued a new Notice of Proposed Rulemaking in January 2005, proposing a rule that was little changed from the 2003 rule that had been struck down. That July, the DC Circuit for the second time threw out the rule, which increased driving time to 11 hours from 10 hours and allowed drivers to go back to work after being off duty for only 34 hours, calling it "arbitrary and capricious." The deadline for the court's July decision to go into effect was Sept. 14. But legal challenges pushed that deadline back.

"The Bush administration has no shame about breaking the law," said Teamsters General President Jim Hoffa. "People are dying on the highway because FMCSA is more

concerned about making its corporate bosses happy than it is about making our highways safe," Hoffa said.

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