

§ 782.4

29 CFR Ch. V (7-1-10 Edition)

Cases, par. 61,726 6 Wage Hour Rept. 676, cf. *Walling v. Silver Fleet Motor Express*, 67 F. Supp. 846)

§ 782.4 Drivers' helpers.

(a) A Driver's "helper," as defined for Motor Carrier Act jurisdiction (Ex Parte Nos. MC-2 and MC-3, 28 M.C.C. 125, 135, 136, 138, 139), is an employee other than a driver, who is required to ride on a motor vehicle when it is being operated in interstate or foreign commerce within the meaning of the Motor Carrier Act. (The term does not include employees who ride on the vehicle and act as assistants or relief drivers. Ex parte Nos. MC-2 and MC-3, supra. See § 782.3.) This definition has classified all such employees, including armed guards on armored trucks and conductorettes on buses, as "helpers" with respect to whom he has power to establish qualifications and maximum hours of service because of their engagement in some or all of the following activities which, in his opinion, directly affect the safety of operation of such motor vehicles in interstate or foreign commerce (Ex parte Nos. MC-2 and MC-3, 28 M.C.C. 125, 135-136): Assist in loading the vehicles (they may also assist in unloading (Ex parte Nos. MC-2 and MC-3, supra), an activity which has been held not to affect "safety of operation," see § 782.5(c); as to what it meant by "loading" which directly affects "safety of operation," see § 782.5(a)); dismount when the vehicle approaches a railroad crossing and flag the driver across the tracks, and perform a similar duty when the vehicle is being turned around on a busy highway or when it is entering or emerging from a driveway; in case of a breakdown: (1) Place the flags, flares, and fuses as required by the safety regulations. (2) go for assistance while the driver protects the vehicle on the highway, or vice versa, or (3) assist the driver in changing tires or making minor repairs; and assist in putting on or removing chains.

(b) An employee may be a "helper" under the official definition even though such safety-affecting activities constitute but a minor part of his job. Thus, although the primary duty of armed guards on armored trucks is to protect the valuables in the case of at-

tempted robberies, they are classified as "helpers" where they ride on such trucks being operated in interstate or foreign commerce, because, in the case of an accident or other emergency and in other respects, they act in a capacity somewhat similar to that of the helpers described in the text. Similarly, conductorettes on buses whose primary duties are to see to the comfort of the passengers are classified as "helpers" whose such buses are being operated in interstate or foreign commerce, because in instances when accidents occur, they help the driver in obtaining aid and protect the vehicle from oncoming traffic.

(c) In accordance with principles previously stated (see § 782.2), the section 13(b)(1) exemption applies to employees who are, under the Secretary of Transportation's definitions, engaged in such activities as full- or partial-duty "helpers" on motor vehicles being operated in transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act. (*Ispass v. Pyramid Motor Freight Corp.*, 152 F. (2d) 619 (C.A. 2); *Walling v. McGinley Co.* (E.D. Tenn.), 12 Labor Cases, par. 63,731, 6 W.H. Cases 916. See also *Levinson v. Spector Motor Service*, 330 U.S. 649; *Pyramid Motor Freight Corp. v. Ispass*, 330 U.S. 695; *Dallum v. Farmers, Coop Trucking Assn.* 46 F. Supp. 785 (D. Minn.)) The exemption has been held inapplicable to so-called helpers who ride on motor vehicles but do not engage in any of the activities of "helpers" which have been found to affect directly the safety of operation of such vehicles in interstate or foreign commerce. (*Walling v. Gordon's Transports* (W.D. Tenn.) 10 Labor Cases par. 62,934, 6 W.H. Cases 831, affirmed 162 F. (2d) 203 (C.A. 6), certiorari denied, 332 U.S. 774 (helpers on city "pickup and delivery trucks" where it was not shown that the loading in any manner affected safety of operation and the helper's activities were "in no manner similar" to those of a driver's helper in over-the-road operation.)) It should be noted also that an employee, to be exempted as a driver's "helper" under the Secretary's definitions, must be "required" as part of his job to ride on a motor vehicle when it is being operated in interstate or foreign commerce; an

employee of a motor carrier is not exempted as a "helper" when he rides on such a vehicle, not as a matter of fixed duty, but merely as a convenient means of getting himself to, from, or between places where he performs his assigned work. (See *Pyramid Motor Freight Corp. v. Ispass*, 330 U.S. 695, modifying, on other grounds, 152 F. (2d) 619 (C.A. 2).)

§ 782.5 Loaders.

(a) A "loader," as defined for Motor Carrier Act jurisdiction (Ex parte Nos. MC-2 and MC-3, 28 M.C.C. 125, 133, 134, 139), is an employee of a carrier subject to section 204 of the Motor Carrier Act (other than a driver or driver's helper as defined in §§ 782.3 and 782.4) whose duties include, among other things, the proper loading of his employer's motor vehicles so that they may be safely operated on the highways of the country. A "loader" may be called by another name, such as "dockman," "stacker," or "helper," and his duties will usually also include unloading and the transfer of freight between the vehicles and the warehouse, but he engages, as a "loader," in work directly affecting "safety of operation" so long as he has responsibility when such motor vehicles are being loaded, for exercising judgment and discretion in planning and building a balanced load or in placing, distributing, or securing the pieces of freight in such a manner that the safe operation of the vehicles on the highways in interstate or foreign commerce will not be jeopardized. (*Levinson v. Spector Motor Service*, 300 U.S. 649; *Pyramid Motor Freight Corp. v. Ispass*, 330 U.S. 695; *Walling v. Gordon's Transport* (W.D. Tenn.), 10 Labor Cases, par. 62,934, affirmed 162 F. (2d) 203 (C.A. 6), certiorari denied 332 U.S. 774; *Walling v. Huber & Huber Motor Express*, 67 F. Supp. 855; Ex parte Nos. MC-2 and MC-3, 28 M.C.C. 125, 133, 134)

(b) The section 13(b)(1) exemption applies, in accordance with principles previously stated (see § 782.2), to an employee whose job involves activities consisting wholly or in part of doing, or immediately directing, a class of work defined: (1) As that of a loader, and (2) as directly affecting the safety of operation of motor vehicles in interstate or foreign commerce within the

meaning of the Motor Carrier Act, since such an employee is an employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service. (*Levinson v. Spector Motor Service*, 330 U.S. 649; *Pyramid Motor Freight Corp. v. Ispass*, 330 U.S. 695; *Walling v. Silver Fleet Motor Express*, 67 F. Supp. 846; *Walling v. Huber & Huber Motor Express*, 67 F. Supp. 855; *Walling v. Gordon's Transports* (W.D. Tenn.); 10 Labor Cases, par. 62,934, affirmed 162 F. (2d) 203 (C.A. 6) certiorari denied 332 U.S. 774; *Tinerella v. Des Moines Transp. Co.*, 41 F. Supp. 798.) Where a checker, foreman, or other supervisor plans and immediately directs the proper loading of a motor vehicle as described above, he may come within the exemption as a partial-duty loader. (*Levinson v. Spector Motor Service*, 330 U.S. 649; *Walling v. Gordon's Transports* (W.D. Tenn.), 10 Labor Cases, par. 62,934; affirmed 162 F. (2d) 203 (C.A. 6), certiorari denied 332 U.S. 774; *Walling v. Huber & Huber Motor Express*, 67 F. Supp. 885; *Walling v. Silver Fleet Motor Express*, 67 F. Supp. 846; *Crean v. Moran Transportation Lines*, 57 F. Supp. 212 (W.D. N.Y.). See also 9 Labor Cases, par. 62,416; *Walling v. Commercial Motor Freight* (S.D. Ind.), 11 Labor Cases, par. 63,451; *Hogla v. Porter* (E.D. Okla.), 11 Labor Cases, par. 63,389 6 W. H. Cases 608.)

(c) An employee is not exempt as a loader where his activities in connection with the loading of motor vehicles are confined to classes of work other than the kind of loading described above, which directly affects "safety of operation." (*Pyramid Motor Freight Corp. v. Ispass*, 330 U.S. 695; *Levinson v. Spector Motor Service*, 330 U.S. 649) The mere handling of freight at a terminal, before or after loading, or even the placing of certain articles of freight on a motor carrier truck may form so trivial, casual, or occasional a part of an employee's activities, or his activities may relate only to such articles or to such limited handling of them, that his activities will not come within the kind of "loading" which directly affects "safety of operation." Thus the following activities have been held to provide no basis for exemption: Unloading; placing freight in convenient places in the terminal, checking bills