

Feds Likely To Drop Ban On States' Rest, Meal Break Rules

By **Jon Steingart**

Law360 (March 1, 2024, 3:37 PM EST) -- Rules in California and Washington that require rest and meal breaks for workers may once again apply to commercial truck and bus drivers if the U.S. Department of Transportation moves forward with proposals to loosen its regulatory action that preempts them, observers told Law360.



A potential waiver by a federal agency would entitle commercial truck and bus drivers to rest and meal periods required by state rules in California and Washington, which call for breaks every few hours. (Paul Chinn/San Francisco Chronicle via AP)

A USDOT agency is considering petitions from the state of California, the International Brotherhood of Teamsters and a trio of organizations that advocate for road safety, including the Truck Safety Coalition, Citizens for Reliable and Safe Highways and Parents Against Tired Truckers. They responded to an **August callout** from the Federal Motor Carrier Safety Administration that said it was **willing to entertain petitions** asking it to grant a waiver from decisions finding federal law preempts the states' requirements.

A waiver would suspend the preemption decisions and entitle drivers to rest and meal periods required by the states' rules, which call for breaks every few hours. While the preemption is in effect, drivers are covered by FMCSA safety standards, known as hours of service rules, that allow longer periods of continuous driving.

Ryan McCoy, a Seyfarth Shaw LLP partner who counsels California employers, told Law360 it's too soon to say companies should restructure their operations to come into compliance with state rest and meal break rules. But they should be prepared for the possibility that the agency will grant a petition, he added.

"That is going to change how they have to comply with the California Labor Code," he said. "In the event that the FMCSA grants the petition, the employer has to be ready at a moment's notice to change its practices."

The agency's actions come from its authority under the Federal Motor Carrier Safety Act, which lets it preempt state requirements if it determines they go further than federal hours of service rules but don't improve safety or make a positive impact on interstate commerce. The statute also lets the FMCSA grant a waiver following a petition from any entity.

Under former President Donald Trump, the FMCSA in 2018 blocked California's rest and meal break rules from being applied to truck drivers and did the same for **Washington's rules** in 2020. Also in 2020, it found the statute preempts California's rules from being applied to passenger bus drivers.

Before the Trump-era decisions, the only time the agency addressed preemption of rest and meal break rules came in 2008, when former President George W. Bush's administration declined to preempt California's requirements. It said the statute lets the FMCSA preempt road safety rules, but it is powerless to stop a generally applicable labor standard.

Marc Blubaugh, who represents transportation businesses as co-chair of Benesch Friedlander Coplan & Aronoff LLP's transportation and logistics practice group, told Law360 that the agency's about-faces make it difficult to rely on.

"This indecision on the part of the agency does not inspire confidence," he wrote in an email. "A waiver is the most literal example of an exception swallowing the rule."

The state of California said in its petition that a waiver would benefit interstate drivers by giving them adequate rest time, which would reduce crashes related to fatigue and improve performance. That would ensure that all commercial drivers in California benefit from its rest and meal break rules, which it has continued enforcing for drivers who make intrastate trips, because the FMCSA has no power to preempt standards that apply to them, it said.

California Attorney General Rob Bonta and Labor Commissioner Lilia García-Brower, who leads the state's enforcement of rest and meal break rules, jointly filed the petition Nov. 13.

"FMCSA's Trump-era preemption decisions endanger the health and welfare of California's workers," Bonta said in a press release at the time. "All workers deserve a work environment that affords them safety and security."

The state of Washington did not submit a petition. A representative of the Department of Labor and Industries, which enforces the rest and meal break rules, did not respond to Law360's request for a comment.

Zach Cahalan, executive director of the Truck Safety Coalition, told Law360 research shows that giving drivers more opportunities for rest reduces crashes by reducing fatigue.

"All aspects of the industry — not just large corporate trucking — all stakeholders in the industry need to pay the cost that safety requires," he said. "If we know that fatigue is a major contributor to truck crashes, and know that we've got reasonable ways to address that, then we should implement those things."

California is such a large market that it would be hard for trucking companies to choose not to operate there rather than comply with its safety requirements, he said.

"You have to think I've got 'stupid' stamped across my forehead if you expect me to believe large corporate carriers aren't going to work in California because of a meal and rest break rule," he said.

McCoy of Seyfarth said he thinks the fact that the FMCSA announced its willingness to consider petitions is a sign that it's going to grant them. That would transform the compliance landscape for employers, he

said.

"If they grant the requested petition from the California attorney general's office, then I think they're going to go back to what the regulatory framework was before 2018," he said.

But McCoy said if the FMCSA grants a waiver, he expects a business association or an affected company itself to file a lawsuit to block it.

"I think this is not the end of the road by any means, even if the FMCSA grants the petitions in California," he said. "I think you're going to see litigation that says they can't do this, and we want an injunction stopping the enforcement of this waiver provision."

He also said he anticipates an uptick in lawsuits alleging rest and meal break violations if the FMCSA grants waivers. A key question will be whether employers that followed federal safety standards following the FMCSA's 2018 and 2020 preemption decisions will face exposure for possible state rule violations during that period, he said.

"The question is going to be whether or not the court will recognize that employers were correctly and reasonably relying upon preemption for the last five or six years," he said. "It would be patently unfair if an employer was held liable for following preemption only to learn years later that they should have been enforcing California meal and rest period rules all along."

--Editing by Amy Rowe.