



State of California  
Office of the Attorney General

XAVIER BECERRA  
ATTORNEY GENERAL

October 29, 2018

***Via Federal eRulemaking Portal***

The Honorable Raymond P. Martinez  
Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Dear Administrator Martinez:

Thank you for this opportunity to offer comments on behalf of the State of California on the American Trucking Association's (ATA) petition before the Federal Motor Carrier Safety Administration (FMCSA): "California Meal and Rest Break Rules; Petition for Determination of Preemption" (FMCSA-2018-0304). 83 Fed. Reg. 50142. In its petition, the ATA requests that the FMCSA declare that California law on meal and rest breaks is preempted under 49 U.S.C. § 31141, which pertains to commercial motor vehicle drivers under the jurisdiction of the U.S. Department of Transportation. The ATA's position is incorrect, as the California standards are general "background" labor standards issued pursuant to the State's sovereign police powers, rather than a specific regulation of motor carrier safety subject to the jurisdiction of the FMCSA. I urge you to deny the ATA's petition.

In general, there is a presumption that "Congress did not intend to displace state law." *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981). This is particularly true in subject areas traditionally governed by state law, such as employment standards: "States possess broad authority under their police powers to regulate the employment relationship to protect workers within the State." *DeCanas v. Bica*, 424 U.S. 351, 356 (1976). Thus, numerous court decisions have upheld California labor standards against preemption challenges in the transportation context. *See People ex rel. Harris v. Pac Anchor Transportation, Inc.*, 59 Cal. 4th 772 (2014) (no preemption of unfair competition action alleging failure to pay minimum wage or reimburse expenses); *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184 (9th Cir. 1998) (no preemption of prevailing wage standards); and *Dilts v. Penske Logistics, LLC*, 769 F.3d 637 (9th Cir. 2014) (no preemption of California meal and rest break standards).



Honorable Raymond P. Martinez

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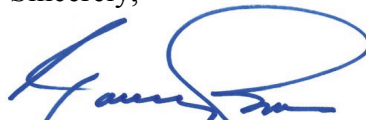
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The FMCSA's authority to preempt state standards is limited to review of "State laws and regulations on commercial motor vehicle safety." 34 U.S.C. § 31141(a). Yet the California provisions targeted by the ATA are routine workplace regulations unrelated to any concerns about motor vehicle safety. California Labor Code Section 512(a) generally establishes an entitlement to a 30-minute meal break for shifts of five hours or more for workers throughout California. Wage Order 9, section 12(A) generally establishes a right for workers in the transportation industry to a 10-minute break per four working hours. Cal. Code Regs., tit. 8, § 11090(12)(A). The same rules for rest breaks appear in the wage orders for other industries throughout California, and are not unique to the transportation industry. Thus, California's meal and rest break laws are "broad laws applying to hundreds of different industries... They are normal background rules for almost all employers doing business in the state of California." *Dilts*, 769 F.3d at 647.

Not surprisingly, when faced with the same question of whether California's meal and rest break laws warranted preemption in a petition brought by a group of motor carriers in 2008, the FMCSA rejected the petition, concluding that the State's general meal and rest break provisions were not regulations on "commercial motor vehicle safety." 73 Fed. Reg. 79204, 79205. Nothing in the language of 49 U.S.C. § 31141 suggests a congressional intent to preempt state workplace standards. And nothing has changed in the intervening years that should lead the FMCSA to a different conclusion than it reached in 2008.

For these reasons, Cal. Lab. Code § 512(a) and Cal. Code Regs., tit. 8, § 11090(12)(A) should not be preempted, and the FMCSA should deny the ATA's petition. I appreciate your consideration of these comments. Should you have any questions, please contact Satoshi Yanai at 213-269-6400 or Satoshi.Yanai@doj.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Xavier Becerra", with a large, stylized flourish at the end.

XAVIER BECERRA  
California Attorney General