

## FLSA-1417

October 26, 1990

This responds to your letter of October 2, 1990, requesting a statement of position by this Department regarding a preemption question posed by the above-captioned case. As stated in your letter, your office was instructed to make this request by staff counsel for the U.S. Court of Appeals for the Second Circuit.

It is our understanding that the issue presented by the case is whether the State of Connecticut's law imposing overtime standards is preempted by the Fair Labor Standards Act with regard to certain employees working for the defendant-employer loading and unloading trucks which travel in interstate commerce. As described by the district court, the employer brought the action seeking declaratory relief that "it was not obligated to pay the employee overtime under the Connecticut Wage and Hour Act ... and that even if it was required to do so [that statute] is preempted by the federal Fair Labor Standards Act."

It is the position of the Department that the FLSA, as reflected by section 18 thereof, 29 U.S.C. 218, does not operate to preempt state laws establishing labor standards, provided they do not diminish the minimum federal standards established by the FLSA. Accordingly, it does not appear that the FLSA operates to preempt the State of Connecticut's enforcing the statute at issue in the instant case.

To the extent that the preemption question presented by this case may embrace federal statutes or regulations other than those administered by the Wage and Hour Division, it would be inappropriate for me to offer an opinion. If necessary to your inquiry, you should contact directly the federal agency administering any such law or regulation.

With regard to your request that the Department participate as an amicus in the instant case, I have been advised by the Solicitor's Office that it does not believe that such participation is warranted. Accordingly, the Department declines your invitation to participate as amicus. In this regard, the Solicitor's Office notes, as stated in your district court papers, that the Second Circuit has already addressed what appears to be a similar preemption question in Pettis Moving Co., Inc. v. Roberts, 784 F. 2d 439 (2d Cir. 1986). There, the court rejected a preemption claim.

Thank you for bringing this matter to our attention.

Sincerely,

Samuel Walker  
Acting Administrator