

The Motor Carrier Act Exemption: The Basics (and a Bit More)

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Compliance **HR**

Today's Webinar Presenter

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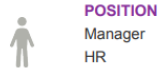


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- A summary of the relevant federal and state exemption standards
- A complete questionnaire transcript

Immediate Expert Guidance

Overtime Exempt Risk Report



POSITION
Manager
HR

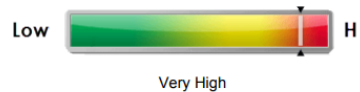


MANAGER
John Smith
HR



WORK JURISDICTION
California

What is the risk of classifying this position as an exempt employee?



Employees in this position are very unlikely to meet the requirements for exemptions: Administrative and Executive.

Employees in this position do not qualify for the following exemptions: Clerical, Professional, Learned Professional and Outside Sales.

Understanding Your Risk

Riskiest Factors

This position's risk may be lowered as follows:

Exemptions	Risk Factor	Steps to Lower Risk
Executive	Employees Supervised	To qualify for the executive exemption, an employee must supervise the work of two or more full-time employees, or their equivalent on a regular basis. Under the FLSA and state wage hour laws, full-time generally means 40 hours of compensable work. Thus, this requirement limits the exemption to employees who supervise at least 80 hours of work each week by other employees. This could be 2 employees working 40 hours per week, or 4 employees each working 20 hours each week. Also, an employee must supervise others on a regular basis, which means more than occasionally. For example, a relief supervisor is like not an exempt employee if he only occasionally has some responsibility for directing the work of other employees. Even though this position supervises 3.00 employees, ComplianceHR Demo may be able to lower its risk by ensuring that employees in this position supervise well above 80 hours work each week and by ensuring that employees in this position supervise those employees on more than one occasional basis.
Executive	Hire/Fire Authority	To qualify for the executive exemption, an employee must either (1) have the authority to hire or fire other employees, or (2) make recommendations which are given particular weight as to hiring, firing, advancement, promotion or any other changes of status of other employees. Employees in this position do not have authority to directly hire or fire, and it appears that their recommendations may not be given particularly strong weight. ComplianceHR Demo may want to consider restructuring Employees in this position's responsibilities such that they have direct authority to make these decisions or give their opinions more weight.

Transcript of Questions & Answers

Engagement Details

Job Title	Manager
Department	HR
Work Jurisdiction	California
Manager First Name	John
Manager Last Name	Smith
Manager Email Address	jsmith@abc.com
Manager Department	HR

Compensation

How are employees in this position paid?	On a salary
What is this position's annual salary?	\$70,000.00
Has the salary ever been reduced for reasons other than standard payroll deductions for taxes, liens, and employee benefits?	No
Number of ComplianceHR Demo employees:	300.00

Applicable Exemptions

Do employees in this position perform work in a computer, software or information technology field?	No
Do employees in this position perform work in any of the following artistic or creative fields?	Not Applicable
How many employees do employees in this position supervise?	3.00
What is the highest level of education achieved by employees in this position?	Some college, no degree
Do employees in this position sell ComplianceHR Demo's products or services?	No

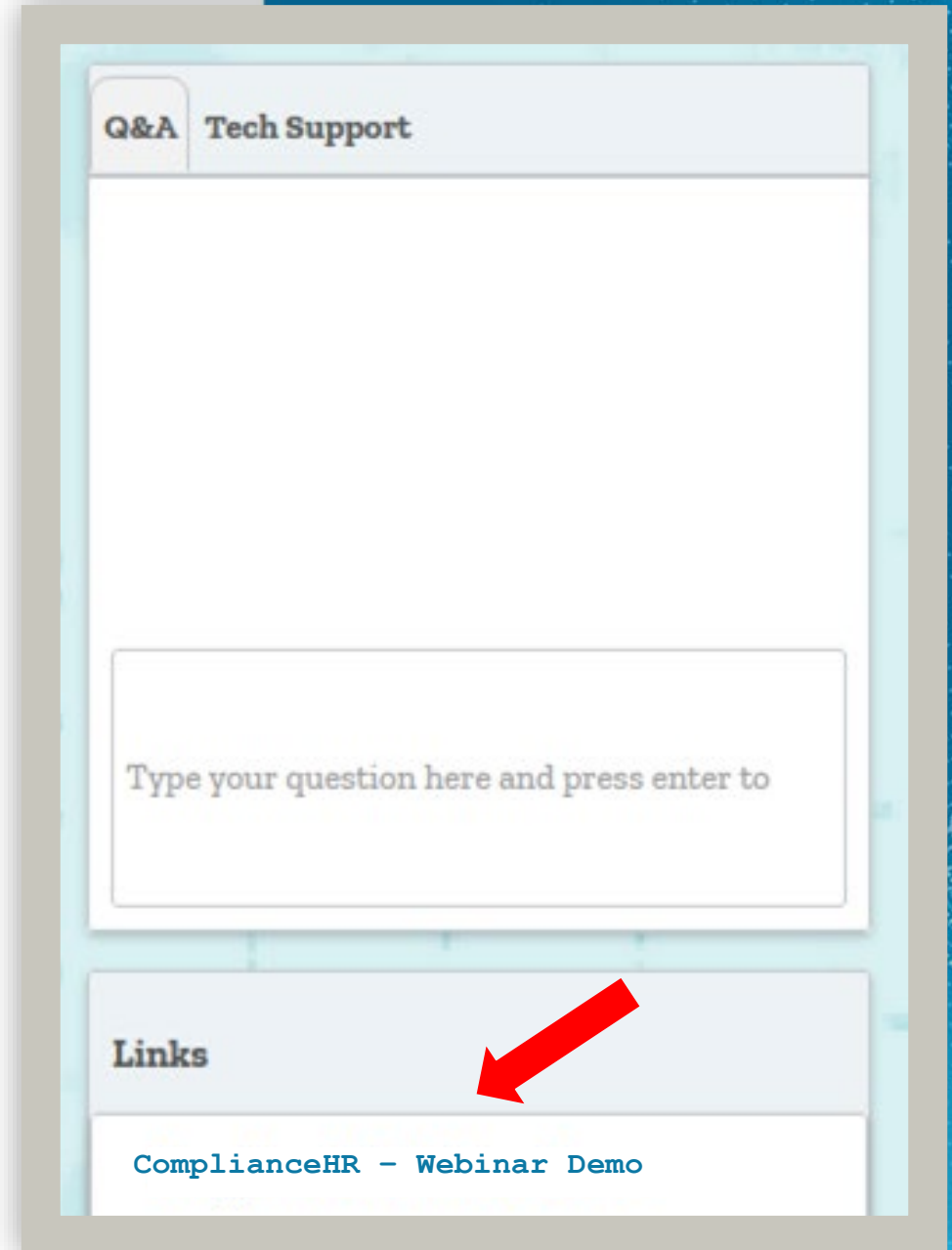
Duty Tests

Job Duty	Time Spent	Importance	Authority
Purchasing, buying, procuring or managing inventory	20%	Important	Almost

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What We'll Cover

- What is the Motor Carrier Act Exemption?
 - What are Motor Private Carriers and Motor Carriers?
 - Who are Covered Employees?
 - What duties are covered? And where?
- The Exception to the Exemption: The Small Vehicle Exception
- The Exceptions to the Exception
 - Passenger vehicles and explosives
- Tricky situations
 - “Mixed Fleets” and how to avoid them
 - Who bears the burden?
 - State laws
 - How do you weigh a truck? (hint: it's more complicated than you think!)

What is the Motor Carrier Act Exemption?

- The exemption to the FLSA's overtime requirements that allows the Secretary of Transportation (not the Secretary of Labor) to determine the wage and hour regulations applicable to Covered Employees.
- 49 U.S.C. § 31502(b): “Secretary of Transportation may prescribe requirements for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.”

The Elements of the Exemption

- The FLSA requirements do not apply to employees who:
- Are employed by a motor carrier or motor private carrier;
- Work as
 - Drivers
 - Driver's Helpers
 - Loaders or
 - Mechanics;
- Have job duties that affect the safety of operation of motor vehicles while in transportation on public highways in interstate or foreign commerce; *and*
- Work in a motor vehicle that does not fall within any exception to the Exemption



What are Motor Carriers and Motor Private Carriers?

- 49 U.S.C. § 13102(14): Motor Carrier: A person providing motor vehicle transportation for compensation.
- 49 U.S.C. § 13102(15): Motor Private Carrier: A person (other than a Motor Carrier) who transports property by motor vehicle and:
 - The person is the owner, lessee, or bailee of the property being transported;
 - The property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise;
 - The property is being transported in interstate or foreign commerce as defined in 49 U.S.C. § 13501.



Who Are Covered Employees? Drivers



- Not required to devote all working time to driving.
- Can spend part time driving interstate, part time driving intrastate
- “Relief drivers” are covered: working as both a part-time driver, as well as loader, unloader, etc.
- Can have other duties: charter bus driver who does tours, farm truck driver who harvests fields
- “Driver salesmen” are covered: spend much of their time selling, but also driving.
- Who is not covered? “Hostlers” – spot trucks at loading dock and drive them around a trucking terminal
(29 U.S.C. § 782.3)

Who are Covered Employees? Driver's Helpers



- Required to ride in the vehicle, not a driver or relief driver.
- Armed guards are covered
- “Conductorettes” on buses are covered
- What is “help?”
 - Dismount when the vehicle approaches a railroad and flag the driver over the tracks
 - Help the vehicle driver to execute a difficult turn
 - Place flags, flares, and fuses during breakdown
 - Assist with changing tires, etc.
- NO PRIMARY DUTY REQUIREMENT: Think about emergency actions (29 U.S.C. § 782.4)

Who Are Covered Employees? Loaders

- Duties include proper loading of a motor vehicle so it can be safely operated
- “Dockman” and “stacker” are covered
- Exercises judgment and discretion (!!)
- in planning and building a balanced load, securing freight to ensure safety
- Can't be “trivial, casual, or occasional” loading – placing a few items in the truck now and then doesn't count
- Not covered: checking bills of lading, wheeling or calling freight, loading for trips that will not be in interstate commerce, loading baggage on buses, unloading, mere physical work (need judgment and discretion)

(29 U.S.C. § 782.5)



Who Are Covered Employees? Mechanics



- Responsible for repairing and maintaining the motor vehicle to keep good and safe working condition
- Inspecting, repairing, adjusting, maintaining steering, lights, brakes, horns, windshield wipers, wheels and axels, bushings, transmissions, differentials, motors, starters and ignitions, carburetors, fifth wheels, springs and spring hangers, frames, and gas tanks – all covered
- Inspecting and maintaining tires (pressure, repairs) is covered
- Hooking up tractors, trailers, and inspecting hookups – covered.
- Not covered: Dispatch (bummer!), carpentry work, painting, oil checks, washes, radiator fills, batteries, inventory, watchman and porter duties, building vehicles

(29 U.S.C. § 782.6)

What Duties are Covered?

“Directly affecting the safety of operation of motor vehicles”

- “Directly:” Dispatchers don’t count as “mechanics” because they wouldn’t be the direct cause of an accident, even if their mistake contributed to it
- “Affecting the safety of operation:” Employees who casually load some items in a truck, but are not responsible for using skill and training to secure the freight so it is safe and will not cause an accident don’t count as “loaders”; employees who help drivers, but do not help with regard to safety (emergency and safe operations), don’t count as “helpers”

I Haven't Dealt With "Interstate Commerce" Since Law School... What do I Need to Know?

- "Interstate Commerce" for the definition of Motor Private Carrier:
 - Where does the company do business and move goods around?
- "Interstate Commerce" for the definitions of Covered Employees
 - Where are the trucks and employees going? Where are they coming from? What's on the truck, and where did it come from?



I Haven't Dealt With "Interstate Commerce" Since Law School... What do I Need to Know?



- “Interstate Commerce” Under the FLSA vs. the MCA
 - Not the same definition! FLSA defines “interstate commerce” broadly, but the MCA defines it narrowly
 - To show the company is a “motor private carrier” need to show actual interstate movement of goods/vehicles – because that uses the MCA definition
 - To show the employees are Covered Employees, though...

The Four Month Rule

- Need to be reasonably expected to perform interstate services
- What is “reasonable?” DOL: Every four months.
- 1981 DOT Notice: If a driver made an interstate trip or otherwise engaged in exempt interstate activities, or could be called upon to do so, the driver would be subject to Secretary of Transportation jurisdiction for four months from the date he was engaged or could be called upon to become engaged. 46 Fed Reg. 37,902.
- Many courts opine that an employee does not actually have to personally work in interstate commerce for his or her position to be covered
- *Morris v. McComb*, 332 U.S. 422 (4 of 21 plaintiffs never drove interstate; all exempt because it was “reasonable expectation”)

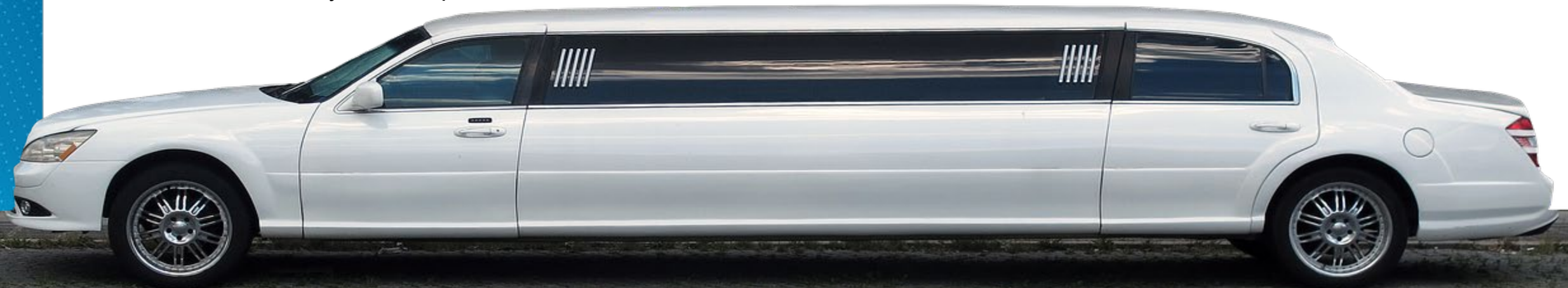
The Small Vehicle Exception

- Notwithstanding the MCA exemption, the FLSA applies (i.e. overtime, and no DOT jurisdiction) to any employee in any workweek:
- Where the employee's work in whole or in part, as a driver, driver's helper, loader, or mechanic, affects the safe operation of motor vehicles weighing 10,000 pounds or less in transportation in interstate commerce; and
- The employee performs duties on motor vehicles weighing 10,000 pounds or less.



Let's Make this More Complicated: Exceptions to the Exception to the Exemption

- Small Vehicle Exception does not apply (i.e. MCA exemption does apply, i.e. DOT has jurisdiction) where the small vehicle is:
 - Designed or used to transport more than 8 passengers, including the driver, for compensation
 - Designed or used to transport more than 15 passengers, including the driver, and not used to transport passengers for compensation; or
 - Used in transporting hazardous material, requiring placarding under regulations prescribed by the Secretary of Transportation.



Hazardous Materials – Really?



- DOT should regulate any driving of hazardous materials, no matter how big or small the vehicle is
- Placarding:
 - DOT regulations turn on what the explosives are, and what they weigh
 - Don't need to placard any time you're carrying explosives
 - Proper DOT compliance will track placarding and keep logs: critically important documents in litigation

Tricky Situations: Mixed Fleets

- Any workweek in which the individual drives a small vehicle (Small Vehicle Exception) destroys the exemption for that workweek
- Example: Delivery driver drives trucks over and under 10,000 pounds each week
- Would not be exempt
- “Dividing jurisdiction over the same drivers, with the result that their employer would be regulated under the Motor Carrier Act when they were driving the big trucks and under the [FLSA] when they were driving trucks that might weigh only a pound less, would require burdensome record-keeping, create confusion, and give rise to mistakes and disputes.”

(Collins v. Heritage Wine Cellars, 589 F.3d 895, 901 (7th Cir. 2009)(Posner))

Mixed Fleets: What to Do?

- Who has the burden?
- Don't forget about interstate commerce: Where is the small vehicle driving happening?
- Consider de minimis time:
 - *Garcia v. W. Waste Servs., Inc.*, 969 F. Supp. 2d 1252, 1260 (D. Idaho 2013) (“if a mechanic is working on small vehicles for more than a de minimis portion of his time, the TCA exception is applicable”); *Schell v. TDJ Oilfield Services*, No. 5-CV-00098-RAJ,*7-8 (W.D. Tex Oct. 4, 2016) (summary judgment precluded by “fact issue as to the frequency and under what circumstances Plaintiffs operated Defendant’s trucks that had a weight of 10,000 pounds or less”)
- *Consider actual duties* of work: Small vehicle exception requires employee to “perform duties” on the small vehicle (commuting doesn't count; voluntary work doesn't count; what about using the pick-up truck to get fast food for the work crew?)
- How to prove it? Truck logs.

Tricky Situations: State Law



- State law can help or hurt: Two examples:
- California: MCA exemption limited to drivers only
- Pennsylvania: The Technical Corrections Act does not apply in Pennsylvania
 - Law that effectuated the Small Vehicle Exception
 - No Small Vehicle Exception in Pennsylvania

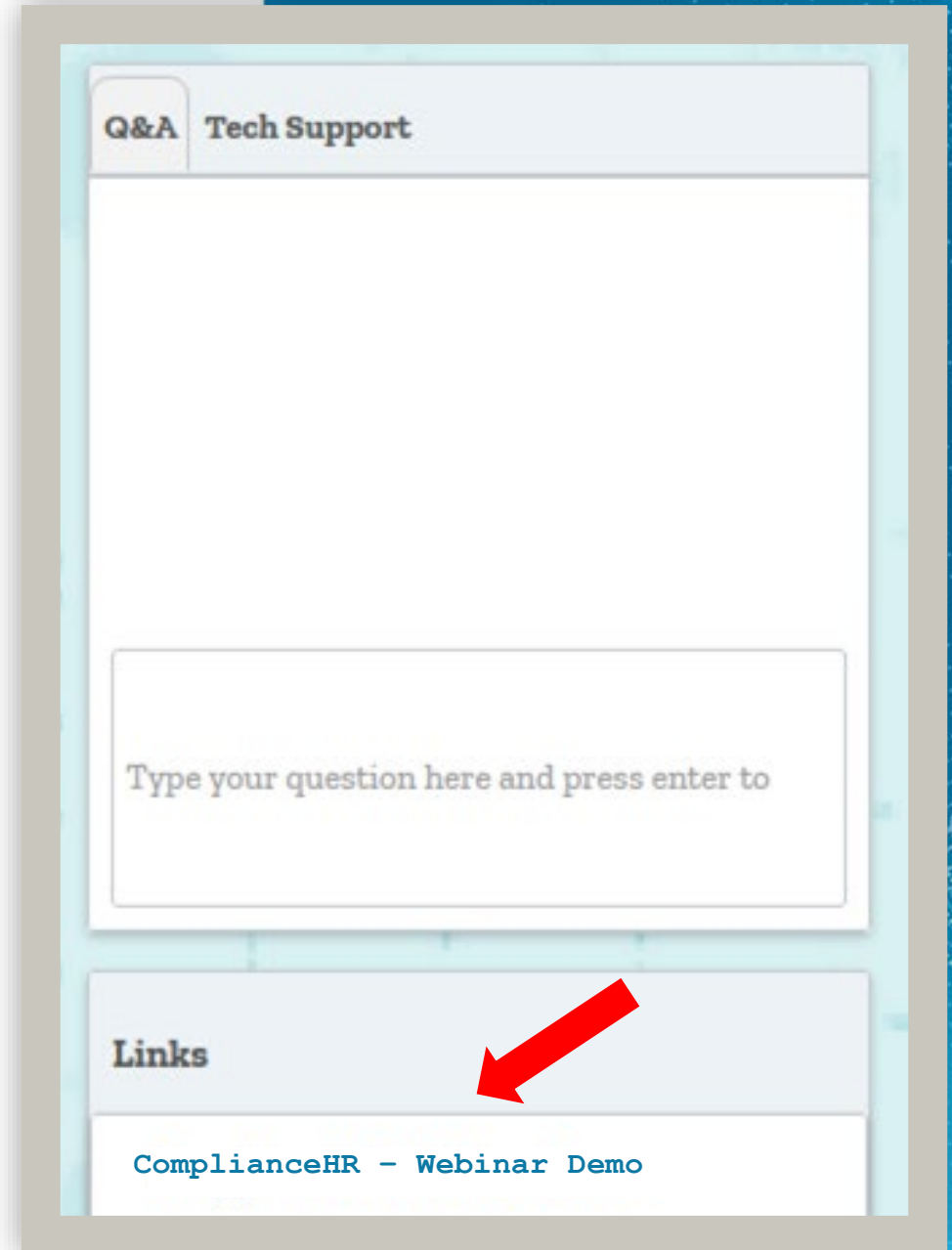
Tricky Situations: How to Weigh A Truck?

- Gross Vehicle Weight Rating (GVWR) v. Actual Weight
 - GVWR: maximum operating weight of a vehicle, specified by the vehicle's manufacturer.
 - For most vehicles, the GVWR can be found on the same label as the VIN number, affixed to the inside of the driver's side door of the vehicle
 - Frequently GVWR is heavier than the actual weight of the vehicle
 - 5th Circuit endorses GVWR, but at least one court disagrees, uses actual weight: *Garcia v. Western Waste Services, Inc.*, 969 F. Supp. 2d 1252 (D. Idaho 2013)
- Hauling trailers: Count the weight of the trailer to add to the gross weight rating
- DOL guidance: DOL "will continue to use the gross vehicle weight rating (GVWR) or gross combined vehicle weight rating in the event that a vehicle is pulling a trailer" to determine whether a vehicle "weighs" 10,000 pounds or less.

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Questions?

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