

**Transportation
Safety**

**Training
ADVISOR**

February 2023

Driver disqualification

Drivers must drive safely on and off the clock

**Trucker fatalities reach
new high**

Don't risk your license

**A new violation is coming to a
CSA screen near you!**

Information and resources to help your drivers operate safely



J. J. Keller
& Associates, Inc.
Since 1953

In This Issue

Training Blueprint3

Ensure drivers understand the severity of some offenses

Training Handout4

Major offenses can lead to disqualification

Test Your Knowledge5

Check your understanding of driver disqualification

A new violation is coming to a CSA screen near you! ..6

Do your drivers know how to transfer their ELD records?

FMCSA proposes narrowing the scope of emergency declarations7

Automatic emergency exemptions could be reduced from 30 days to 5 in some cases

Expert Help7

See our experts' answers to questions about transferring a CDL and giving road tests



MESSAGE FROM THE EDITOR

Trucker fatalities reach new high

Truck driving remains one of the nation's deadliest jobs, with 1,032 professional drivers losing their lives in 2021, according to recent data from the Bureau of Labor Statistics (BLS).

That's the highest fatality number for drivers since the BLS began keeping track in 2003. It represents an increase of over 16 percent since 2020, when 887 drivers lost their lives on the job.



Although nothing you do can completely eliminate the risk to your drivers, there are steps you can take to keep your drivers as safe as possible while they're out on the road.

One of the most significant actions you can take to help keep your drivers safe in a crash is to ensure that they wear their seatbelts. Wearing a seatbelt can dramatically increase a driver's chances of surviving a crash. In fact, in recent years the FMCSA found that over 40 percent of large-truck occupants involved in fatal crashes were not wearing their seatbelts. Of those, 43 percent were killed in the crash, compared to 8 percent of belted truck occupants.

Make it an absolute expectation of your drivers that they wear their seatbelt each and every time they get behind the wheel.

Also, though most large-truck crashes are caused by other drivers, the FMCSA has consistently found that speeding, distraction, and failing to yield are the top three crash-related factors recorded for truck drivers involved in fatal crashes. Putting policies and procedures in place to minimize these behaviors and training drivers on defensive driving techniques can further help prevent driver fatalities.

In addition to making it clear to your drivers that you expect them to drive carefully and defensively, you might consider detailing in your company policy the progressive disciplinary actions that will result when drivers fail to live up to these expectations.

By training your drivers, communicating clear expectations, and spelling out consequences for failing to meet expectations, you can minimize your drivers' risk of causing a crash and their risk of being severely injured or killed in a crash. ♦



Jen Loomis

Jen Loomis joined J. J. Keller in 2021 on the Content & Consulting Services Transportation Team. As an Associate Editor, Jen edits a variety of products including the *Transportation Safety Training Advisor*, *Driver Report*, and *Driver Training Awareness Program* newsletters. She also provides regulatory support in the area of DOT drug and alcohol testing.



TRAINING BLUEPRINT — DRIVER DISQUALIFICATION

Disqualification is no joke

Driver disqualification is a serious issue. A driver holding a commercial driver's license (CDL) or commercial learner's permit (CLP) can be disqualified from driving a commercial motor vehicle (CMV) if convicted of certain violations while driving any type of vehicle. This includes violations committed in a personal vehicle on personal time. It is important that drivers understand the disqualification provisions, as certain actions and choices, whether on or off the job, can have an impact on an individual's driving career.

Major offenses

A driver is disqualified from operating a CMV if convicted of any of the following major offenses while driving any type of vehicle:

- Being under the influence of alcohol as prescribed by state law;
- Being under the influence of a controlled substance;
- Refusing to take an alcohol test as required by a state or jurisdiction under its implied consent laws or regulations;
- Leaving the scene of an accident;
- Using a vehicle to commit a felony; or
- Using a vehicle to commit a felony involving the manufacturing, distributing, or dispensing of a controlled substance.

TIP: Stress to drivers that their conduct in a personal vehicle is just as important as their conduct in a company vehicle. Just one conviction in any type of vehicle can keep a driver off the road for one year.

A driver is disqualified from operating a CMV if convicted of any of the following major offenses while driving a CMV:

- Having an alcohol concentration of 0.04 or greater;
- Driving a CMV when, as a result of prior violations committed operating a CMV, the driver's CDL or CLP is revoked, suspended, or canceled, or the driver is disqualified from operating a CMV; or
- Causing a fatality through the negligent operation of a CMV.

Serious traffic violations

A driver is disqualified from operating a CMV if convicted of any two or more serious traffic violations

while operating a CMV or non-CMV. Two of these serious traffic violations within three years disqualifies the driver for 60 days; three serious traffic violations within three years disqualifies the driver for 120 days.

Serious traffic violations include:

- Excessive speeding (15 mph or more above the posted speed limit),
- Reckless driving,
- Making improper or erratic lane changes,
- Following the vehicle ahead too closely, or
- Violating a state or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal accident.

TIP: Make sure drivers understand how the three-year time period is determined. The State must use the date of conviction or a later date, rather than the offense date, as the basis for calculating the starting and ending dates for the driver disqualification period. The use of the conviction date or a later date ensures that the driver receives due process of law but still serves the full disqualification required.

A driver is disqualified from operating a CMV if convicted of any combination of two or more of the following serious traffic violations while operating a CMV:

- Driving a CMV without obtaining a CDL or CLP,
- Driving a CMV without a CDL or CLP in the driver's possession,
- Driving a CMV without the proper class of CDL or CLP and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported,
- Violating a state or local law or ordinance on motor vehicle traffic control prohibiting texting while driving, or
- Violating a state or local law or ordinance on motor vehicle traffic control restricting or prohibiting the use of a handheld mobile telephone. ♦



TIP: End the training with a question-and-answer session.



TRAINING HANDOUT — DRIVER DISQUALIFICATION

Don't risk your license

Major offenses

- Driving under the influence of alcohol or drugs
- Refusing an alcohol test
- Leaving the scene of an accident
- Using a vehicle to commit a felony
- Using a vehicle to commit a felony involving the manufacturing, distributing, or dispensing of drugs
- Having an alcohol concentration of 0.04 or greater*
- Driving a CMV when the driver's CDL is revoked, suspended, canceled, or driver is disqualified from operating a CMV*
- Causing a fatality through negligent operation of a CMV*

***Applies only to a conviction for an offense while driving a CMV**

Disqualification periods

First conviction (not transporting hazmat)	1 year
First conviction (transporting hazmat)	3 years
Second conviction	Life (eligible for reinstatement in 10 years)
Using a vehicle to commit a felony involving the manufacturing, distributing, or dispensing of a controlled substance	Life (not eligible for reinstatement)



TEST YOUR KNOWLEDGE — DRIVER DISQUALIFICATION

Directions: Read each statement or question carefully and mark the best answer.

1. If you are convicted of operating your personal vehicle while intoxicated, you will be disqualified from operating a commercial motor vehicle.
 - A. True
 - B. False
2. The disqualification period for a first major offense while transporting hazmat is:
 - A. Six months
 - B. One year
 - C. Three years
 - D. Life
3. In some instances, a driver who receives a lifetime ban may be eligible for reinstatement in ____ years.
 - A. One
 - B. Three
 - C. Five
 - D. Ten
4. Using a vehicle to commit a felony involving the manufacturing, distributing, or dispensing of drugs will result in a lifetime ban.
 - A. True
 - B. False
5. Which of the following is not considered a major offense?
 - A. Refusing an alcohol test
 - B. Driving a CMV without a CDL or CLP in your possession
 - C. Leaving the scene of an accident
 - D. Using a vehicle to commit a felony

NAME: _____ **DATE:** _____



A new violation is coming to a CSA screen near you!

The Federal Motor Carrier Safety Administration (FMCSA) has announced that a new electronic logging device (ELD) violation will be added to the scoring in the Safety Measurement System (SMS). The SMS is the scoring mechanism in the Compliance, Safety, Accountability (CSA) program. The violation that will be added to the SMS is an ELD data transfer violation, specifically §395.24(d), *ELD cannot transfer ELD records electronically*. This violation will carry a normal severity of 3 in the Hours-of-Service Enforcement BASIC.



Do ELD violations affect my CSA score?

Any violation of §395.24(d) written on or after December 1, 2022, will be used in the scoring starting with the December 30, 2022, data capture. The results of this data capture and scoring cycle will be visible in early January. Violations written prior to December 1, 2022, will not be used in the scoring.

Normally not an OOS violation, but . . .

If the driver cannot display (or print, if the system uses printing rather than a display) **and** cannot transfer the ELD records, the driver will be placed out of service. The violation that is normally written when this happens is §395.8(a), *no record of duty status when required*. This violation will result in a 10-hour out-of-service period and has a severity weight of 5 in CSA (which increases to 7 when the driver is placed out of service).

Avoiding this violation

This violation is written when a driver cannot transfer ELD records electronically to an officer, so to avoid it, conduct initial and ongoing training on how to transfer the records with your drivers. When doing the training, do it as a live, hands-on exercise that simulates what a driver will go through during a roadside inspection. ♦

What are the ELD rules for electronic data transfer?

According to the rules, the device must be able to transfer the records to an officer using either local transfer (Bluetooth and USB) or telematics (webservice and email). The driver must be able to do the transfer using both specific transfer methods the device uses. As an example, if the ELD uses telematics, the driver must know how to do the transfer using both the webservice and email methods.

Common reasons the records will not transfer include:

- The driver cannot execute the transfer due to not being familiar with the process;
- The device cannot get connectivity with the cellular network; and
- The device is malfunctioning and, as a result of the malfunction, cannot transfer the records.



FMCSA proposes narrowing the scope of emergency declarations

The Federal Motor Carrier Safety Administration (FMCSA) has proposed changes that will affect the rules that truck and bus drivers need to follow when responding to government-declared emergencies.

The agency plans to narrow the automatic applicability of the 30-day exemption authorized in §390.23. Today, that rule offers relief from most FMCSA safety regulations for drivers providing direct assistance to emergency-relief efforts. Under the proposal, the exemption would be limited to hours of service (HOS) limits in §§395.3 and 395.5 unless the President declared the emergency.

The proposed changes would affect §§390.5, 390.5T, 390.23, and 390.25 and include:

- Modifying the definition of emergency in §§390.5 and 390.5T;
- Removing the definition of emergency relief from §§390.5 and 391.5T;
- Modifying the definition of direct assistance in §§390.5 and 390.5T;
- Moving the definition for residential heating fuel from §390.23 to §§390.5 and 390.5T;
- Reducing automatic regulatory relief from 30 days to 5 days for non-presidential emergency declarations;
- Exempting drivers of commercial motor vehicles (CMVs) from HOS regulations only, rather than all regulations in Parts 390-399;
- Simplifying the language of §390.25; and
- Requiring that requests for extensions or modifications be made via email.

FMCSA hopes that these changes, if adopted, will allow for more tailored and appropriate responses to emergencies while potentially increasing safety.

Feedback on this Notice of Proposed Rulemaking (NPRM) can be submitted on the Regulations.gov website at <https://www.regulations.gov/document/FMCSA-2022-0028-0001> through February 6, 2023. ♦



Next Month's Topic: Back Safety/Safe Lifting Practices

Back problems are a common cause of lost work time for the professional driver. Next month, we will address the causes of back pain, how everyday habits can have an impact on back health, and safe lifting practices.

Expert Help: Questions of the Month

Question: Our company operates throughout the United States. When drivers move from one state to another, how much time are they allowed to update their CDL?

Answer: Per Section 383.71(c), a transfer from a former state of domicile to the new state of domicile must be completed within 30 days of establishing the new state of domicile. With that said, your company can't have a blanket rule that covers all of your drivers. The timeframe for completing the process varies from state to state, and some states require that this transaction be completed in as little as 10 days. You would need to consult with each state's licensing agency for specifics.

Question: What does FMCSA consider a "solo dispatch"? We're trying to determine when we need completed road tests for our field techs who have the option to take service trucks (CMVs) home using personal conveyance.

Answer: The road test is required before you use a driver in support of the business for the first time. This includes performing normal company functions to support customers, taking a vehicle for fuel, or delivering a vehicle to a shop for maintenance. Personal conveyance is not in support of the business if there is no business benefit to the trip. That said, if that driver is in a crash while using your vehicle for personal use, a plaintiff's attorney would likely point out that your company allowed a driver use of a company vehicle prior to having passed a road test. It may be wise, given the litigious society we live in, not to allow a driver to use a company CMV on their own, personal use or not, prior to passing a road test. ♦

Answers to quiz on page 5:

1) A 2) C 3) D 4) A 5) B

Copyright 2023 J. J. Keller & Associates, Inc.

Neither the *Transportation Safety Training Advisor* nor any part thereof may be reproduced without the written permission of J. J. Keller. Government regulations change constantly, therefore, J. J. Keller cannot assume responsibility or be held liable for any losses associated with omissions, errors, or misprintings in this publication. This publication is designed to provide reasonably accurate information and is sold with the understanding that J. J. Keller is not engaged in rendering legal, accounting, or other professional services. If legal or other expert advice is required, the services of a competent professional should be sought.

EDITOR: Jen Loomis

ISSN 2688-1616

GST R123-317687

(66788)

PITB SAFETY SUMMIT



Supporting Washington's Safest Employers

"Our company works closely with PITB to ensure the highest safety standards and have implemented claims management processes that have saved our company millions of dollars over the years."

— Oak Harbor Freight Lines

The PITB Safety Summit is a forum for delivering relevant safety education to the agriculture, manufacturing and transportation industries.

The virtual Safety Summit is held quarterly, on the 2nd Wednesday of the month from 11 am-noon, is free to attend, and open to all employers.

Attendees will have the opportunity to learn from safety experts who will discuss hot topics, trends, new regulations, and solutions for continuous improvement of workplace safety.

Visit www.PITB.com for Safety Summit dates.

CONTACT: (503) 766-6081 OR PITB.COM

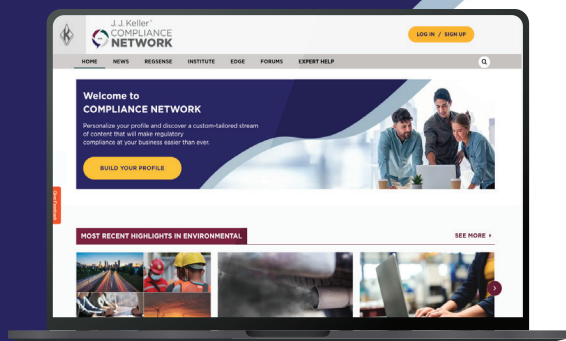
Join an Entire **NETWORK** of Safety & Compliance Expertise...

Become a member of **COMPLIANCE NETWORK** and gain access to J. J. Keller's industry-leading safety and compliance content – custom-tailored to your exact regulatory needs.



MEMBERS ENJOY THESE VALUABLE BENEFITS:

- ▶ **PERSONALIZED REGULATORY CONTENT** for workplace safety, transportation, environment, HR, and other markets.
- ▶ **NEWS & TRENDING ISSUES** relevant to your industry, area(s) of operation, and more.
- ▶ **J. J. KELLER INSTITUTE**, an expansive collection of articles, videos, and interactive exercises spanning 120+ compliance topics.
- ▶ **UNPRECEDENTED ACCESS TO EXPERTS** through question submissions, one-on-one phone or video consultations, and in-depth research requests.
- ▶ **AND MORE**



Build Your Profile and Start Getting Personalized Content Today
Visit JJKellerComplianceNetwork.com