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Driver Coercion Rule: What Shippers And Carriers Need to Know

As a new truck driver coercion rule goes into effect, the need for communication with drivers is greater than ever. Motor carriers, shippers, receivers, and transportation intermediaries need to train drivers on the updated policies and procedures.

In November 2015, the Federal Motor Carrier Safety Administration (FMCSA) adopted regulations that prohibit drivers from being coerced to operate commercial motor vehicles in violation of certain provisions of the Federal Motor Carrier Safety Regulations, including those that relate to hours of service, drug and alcohol testing, and hazardous materials transport. The regulations were effective Jan. 29, 2016.

The driver coercion rule prohibits any threat to withhold business or to take adverse employment action against a driver for refusing to operate a commercial motor vehicle under conditions that would require the driver to violate federal regulations. One example of coercion is a motor carrier's threat to withhold drivers' dispatches unless they deliver a load that violates hours-of-service regulations. Another example of coercion is threatening to fire drivers if they refuse to operate an unsafe vehicle.

The rule's prohibitions apply not only to covered motor carriers, shippers,

receivers, and intermediaries, but also to their respective agents, officers, or representatives. The rule applies to shippers and brokers when they assume the role normally reserved to the driver's employer.

Trained Responses

There is some concern that drivers can abuse the new regulation. For this reason, it is important to train dispatchers and other personnel in frequent contact with drivers how to respond when a driver indicates that a dispatch will lead to a violation.

Personnel should avoid instructions or comments that could be construed as a threat against the driver's employment or work opportunities. They should also have a conversation with the driver about the issue being raised and whether a violation would indeed occur. Certainly, a driver notifying the company of a potential violation is helpful information to promote safety and avoid adverse results. Even if there is no perceived violation, however, personnel

should avoid communications, including texts and emails, that could be perceived to contain a threat.

Determining Violations

The rule generally puts the onus on drivers, who must communicate to their employers that they believe they are being persuaded to do something that violates a regulation. Drivers must file complaints of coercion with the FMCSA within 90 days. They also must provide information, such as their name and address, and the name and address of the person allegedly coercing them, along with any evidence. At that point, a FMCSA division administrator will determine if the complaint is non-frivolous. If the complaint is valid, the division administrator will investigate.

If division administrators determine a violation has occurred, they may issue a Notice of Violation or a Notice of Claim, which are established FMCSA interventions. A Notice of Violation is an informal mechanism to address compliance deficiencies, while a Notice of Claim is issued in cases where regulatory violations are severe enough to warrant assessment and issuance of civil penalties. Violators could potentially face a \$16,000 fine per violation and, in extreme cases, a loss of operating authority. ■