

SHIELD

a quarterly publication from Protective Insurance

**Navigating Through the Era of
Reptile Theory & Nuclear Verdicts**

**FMCSA Looks to Revise
Hours of Service Regulations**

**CDL Drug & Alcohol
Clearinghouse**

**CBD & Drug Testing:
THE IMPACT**

FALL 2019





 **PROTECTIVE**
INSURANCE

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NEWS & NOTES



CLAIMS & SAFETY 2019 RECAP

The annual Claims & Safety Seminar took place Oct. 9 & 10 in Carmel, Indiana. This year’s speakers discussed issues at the forefront of our industry including workplace violence, return-to-work programs, cyber security and more.

Attorney David Hall’s presentation, Flip the Script, focused on the language of the industry. Under the axiom “no good deed goes unpunished,” the language in company materials meant to convey the trucking company’s commitment and dedication to a culture of safety form the basis for the strategies designed to elicit runaway verdicts. Hall discussed some of the terms that have been hijacked and how to take back the narrative.

Social media took center stage as Jim Goss, founder and CEO of GII-PIL, discussed investigative strategies and tools. If claims handlers, adjusters, SIU investigators, HR Personnel, safety managers, and investigative support staff don’t understand or apply the proper investigative strategies, valuable information that could be detrimental to the claim may be overlooked, which could result in paying unfounded or fraudulent claims.

Mary Bennett and Kristy Needham discussed Transition2Work®, the return-to-work program offered by their company, ReEmployAbility. The program provides transitional employment with a nonprofit agency for an injured employee when the pre-injury employer is unable to accommodate a temporary light duty work release.

Ron Pelletier of Pondurance got attendees up to speed on cyber crime with his presentation Motivations and Mitigations Relating to Cyber Crime. We learned the many ways a bad actor can instigate cyber malfeasance along with the motive that drive their actions. Ron also identified remedies to mitigate the level of risk exposure to reasonable levels without breaking the bank.

Keynote speaker Jesus Villahermosa kicked off day two of the seminar with his presentation Workplace Violence Prevention and Surviving the Active Lethal Threat. With approximately two million victims of workplace violence reporting each year and 25% not reporting when it does happen, it is critical that businesses develop and implement workplace violence prevention programs for their employees. These plans must include how to respond to an Active Lethal Threat Event.

Dr. Todd Simo, HireRight’s Chief Medical Officer, wrapped up the seminar with his presentation Marijuana Testing in the Current Employment Environment. He explained the varying nature of decriminalized marijuana from an employment perspective and how employers can incorporate testing to maintain a safe work environment while protecting employees’ rights.

10 GRAB-AND-GO FOODS TO CRANK UP YOUR VITAMIN C INTAKE

It’s that time of year again when the season begins to change and your immune systems could use a charge. Due to the busy on-the-go lifestyle of the professional CDL driver, it is important to fuel your body with foods rich in vitamin C to boost your immune system. We all know that oranges are a good source of vitamin C (one orange contains roughly 70mg of vitamin C). But did you know there are 10 other easy-access foods that are even more powerful than oranges?

As professional CDL driver, vitamin C can play an important part in keeping you well on and off the road. Vitamin C functions as an antioxidant, supports the immune system, improves bone health, and can even protect against the onset of heart disease and certain cancers. Having a strong, healthy immune system is one of the best ways professional CDL drivers can steer clear of illness. When the seasons change your immune system can be strained by the increase in airborne bacteria and viruses. Other causes that might lower your immune system are stress or even a lack of sleep. The daily recommended dietary allowance of vitamin C is 90mg for men and 75mg for women.

So how can you crank up your vitamin C intake and stay well to keep America moving this fall?

Try incorporating a few of these grab-and-go foods into your daily meal plan:

1. **PAPAYA** is a fruit very rich in vitamin C, it contains over 450mg of vitamin C.
2. **GUAVA FRUIT** is also an excellent on-the-go choice for a full day’s worth of recommended vitamin C intake. This amazing fruits holds 250mg of vitamin C.
3. Add a few **BLACKCURRANT BERRIES** to your morning yogurt or oatmeal. Blackcurrant berries are small but powerful. Only a small portion is needed to consume about 200mg of vitamin C.
4. **RED BELL PEPPERS** are great as a salad topping or simply eat them in slices as a snack. This fresh vegetable contains 200mg of vitamin C in just one cup. The bell pepper also provides an excellent source of vitamin A for eye health as well.
5. **SPINACH AND KALE** are two awesome vegetables that can be eaten raw. One serving contains about 100mg of vitamin C.
6. A spicier on-the-go option - the **CHILI PEPPER**! Consuming only a half cup of this pepper daily will give your body about 110mg of vitamin C. Add a little spice to any meal or add a splash to your next 8oz. glass of water with a little vinegar. The chili pepper has compounds that can also support joint pain as well.
7. **LEMONS, LIMES, AND GRAPEFRUITS** all have about 70mg of vitamin C. Adding any of these three “tarts” to your water could be yet another excellent way to take in some extra vitamin C to boost your immune system and keep you well.
8. **BRUSSELS SPROUTS** tend to be a love or hate food among most people. However, they contain about 50mg of vitamin C and can be eaten raw or roasted as a quick addition to any salad or meal.
9. The petite, fuzzy, yet astonishing **KIWI** can be eaten whole or peeled. Kiwi fruit contains about 65mg of vitamin C.
10. Last but not least is the lovely **STRAWBERRY**. This attractive berry can be eaten as a topping on your salad, as a standalone, or as a snack in your yogurt. No matter how you choose to eat them it will be a fantastic treat! One serving of this amazing little berry carries about 20mg of vitamin C.

U.S. Department of Labor Orders Kentucky Trucking Company to Reinstate Driver Who Refused to Operate Vehicle During Inclement Weather

The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) has ordered Freight Rite Inc.—based in Florence, Kentucky—to reinstate a truck driver terminated after he refused to operate a commercial motor vehicle in hazardous road conditions caused by inclement winter weather. OSHA ordered the company to pay the driver \$31,569 in back wages and interest, \$100,000 in punitive damages, \$50,000 in compensatory damages, and reasonable attorney fees, and to refrain from retaliating against the employee.

OSHA inspectors determined that the employee advised the company's management of his reasonable apprehension of danger to himself and to the general public due to the hazardous road conditions. The termination is a violation of the Surface Transportation Assistance Act (STAA).

In addition to reinstating the employee and clearing his personnel file of any reference to the issues involved in the investigation, the employer must also post a notice informing all employees of their whistleblower protections under STAA.

"Forcing drivers to operate a commercial motor vehicle during inclement weather places their lives and the lives of others at risk," said OSHA Regional Administrator Kurt Petermeyer, in Atlanta, Georgia. "This order underscores the agency's commitment to protect workers who exercise their right to ensure the safety of themselves and the general public."

“Forcing drivers to operate a commercial motor vehicle during inclement weather places their lives and the lives of others at risk.”

Federal Judge Orders Lloyd Industries and Company Owner to Pay \$1.04 Million to Employees Terminated for Assisting Safety Investigation

A federal judge in the U.S. District Court for the Eastern District of Pennsylvania has awarded \$1,047,399 in lost wages and punitive damages to two former employees of a Montgomeryville, Pennsylvania, manufacturer after a jury found the company and its owner fired the employees in retaliation for their participation in a federal safety investigation.

On April 2, 2019, a jury determined that Lloyd Industries Inc. and owner, William P. Lloyd, illegally fired the employees because they participated in a 2014 inspection by the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA). The inspection followed an incident in which one of the employees' co-workers suffered the amputation of three fingers.

The company fired one of the employees after OSHA began an onsite investigation, and fired the second employee shortly after OSHA issued citations, and assessed Lloyd Industries with penalties. The acts of retaliation violated Section 11(c) of the Occupational Safety and Health Act (OSH Act). The court's award of \$500,000 in punitive damages is the largest punitive award ever under Section 11(c) of the OSH Act. The court justified the award in light of the defendants' "deliberative flouting of the act."

In addition to damages, the judge awarded the former employees \$547,399 in front and back pay, prejudgment interest, and additional amounts to compensate for the adverse tax consequences of their receiving a large, one-time payment. The judge also ordered that Lloyd Industries and William P. Lloyd post an anti-retaliation notice at the plant immediately, and never again violate Section 11(c) of the OSH Act.

"The court recognized that all employees have a federally protected right to speak out against unsafe and unhealthy working conditions, to participate in U.S. Department of Labor investigations, and to be compensated if they are terminated in retaliation for exercising those rights," said Regional Solicitor Oscar L. Hampton III, in Philadelphia. "The significant punitive damages sends a strong message to this employer and others that deliberately violating these laws will not be tolerated."

WhistleblowerProtection

OSHA enforces the whistleblower provisions of more than 20 whistleblower statutes protecting employees who report violations of various airline, commercial motor carrier, consumer product, environmental, financial reform, food safety, motor vehicle safety, healthcare reform, nuclear, pipeline, public transportation agency, railroad, maritime, and securities laws.

An employer cannot take an adverse action against employees, such as: firing or laying off, demoting, denying overtime or promotion, or reducing pay or hours, for engaging in activities protected by OSHA's whistleblower laws.

What Is Retaliation?

Retaliation occurs when an employer (through a manager, supervisor, or administrator) fires an employee or takes any other type of adverse action against an employee for engaging in protected activity.

An adverse action is an action which would dissuade a reasonable employee from raising a concern about a possible violation or engaging in other related protected activity. Retaliation can have a negative impact on overall employee morale.


Source: OSHA.gov

Adverse actions can be subtle. It may not always be easy to spot.

Examples of adverse actions include:

- Firing or laying off
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Intimidation or harassment
- Making threats
- Reassignment to a less desirable position or actions affecting prospects for promotion (such as excluding an employee from training meetings)
- Reducing pay or hours
- More subtle actions, such as isolating, ostracizing, mocking, or falsely accusing the employee of poor performance
- Blacklisting (intentionally interfering with an employee's ability to obtain future employment)
- Constructive discharge (quitting when an employer makes working conditions intolerable due to the employee's protected activity)





The signing of the 2018 Farm Bill changed the way hemp is defined and regulated in the U.S. Both hemp and marijuana are members of the Cannabis family, but hemp is defined as having a THC concentration of no more than 0.3 percent by dry weight. Hemp was also removed from the Controlled Substances Act making it legal to cultivate, possess, sell and distribute. These changes have opened the door to both a burgeoning business opportunity and many concerns for employers.

CBD & DRUG TESTING: THE IMPACT

CBD

is showing up in a wide variety of products including oils, lotions and even food. The suggestions for use are diverse as well – from anxiety to insomnia to chronic pain. Questions arise over how the use of CBD will impact drug tests and the answers are not reassuring.

There is little regulation of these new products in the marketplace. Inconsistencies in the manufacturing of CBD can lead to the end product containing more THC than allowed. Each state determines how it will test THC levels in hemp plants adding to more inconsistencies. Once the end product is available, few states conduct further testing and dosage recommendations vary widely. Random testing by consumer groups has found some products labeled as CBD containing none of the chemical and others containing levels of THC well above the legal limit.

The combination of these factors puts CBD users at risk. A number of users have come forward with their personal experiences of testing positive for marijuana use when they had only consumed or used products containing CBD. With the lack of oversight in this arena, consumers must use caution.

Employers must be cautious as well. No one wants to lose a good employee due to a false positive on a drug screen. Poppy seeds and decongestants have both been tied to false positive test results!

Encourage your employees to be accurate when completing their medical history prior to testing. Prescription drugs, over-the-counter remedies and herbal supplements can all impact the results of a drug screen.

Conduct your company's drug testing with a reputable lab. There are two main types of tests –immunoassay and gas chromatography-mass spectrometry (GC-MS). Generally, the immunoassay is completed first. If a positive result is reported, then the GC-MS is completed to confirm or negate the result. This two-step process can help to reduce false-positive test results.

Make sure you know your state's laws and seek legal advice when in doubt.

Sources: Forbes, WebMD, Consumer Reports, FDA.gov, Drugs.com

DEFINITIONS

CBD: cannabidiol – non-intoxicating extract of the Cannabis or hemp plant

CBN: cannabinol – a THC derivative

HEMP: a strain of the Cannabis sativa plant grown for industrial uses; it contains low concentrations of THC and high concentrations of CBD

MARIJUANA: a psychoactive drug from the Cannabis plant; contains high concentrations of THC

THC: tetrahydrocannabinol – the compound that creates the “high” of marijuana



THE FOOD & DRUG ADMINISTRATION

FDA continues to be concerned at the proliferation of products asserting to contain CBD that are marketed for therapeutic or medical uses although they have not been approved by FDA. Often such products are sold online and are therefore available throughout the country. Selling unapproved products with unsubstantiated therapeutic claims is not only a violation of the law, but also can put patients at risk, as these products have not been proven to be safe or effective. This deceptive marketing of unproven treatments also raises significant public health concerns, because patients and other consumers may be influenced not to use approved therapies to treat serious and even fatal diseases.

Unlike drugs approved by FDA, products that have not been subject to FDA review as part of the drug approval process have not been evaluated as to whether they work, what the proper dosage may be if they do work, how they could interact with other drugs, or whether they have dangerous side effects or other safety concerns.

CDL Drug & Alcohol Clearinghouse

The Federal Motor Carrier Administration (FMCSA) is establishing the Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse. This new database will contain information pertaining to violations of the U.S. Department of Transportation (DOT) controlled substances (drug) and alcohol testing program for holders of CDLs.

Employers will be required to query the Clearinghouse for current and prospective employees' drug and alcohol violations before permitting those employees to operate a commercial motor vehicle (CMV) on public roads. Employers will also be required to annually query the Clearinghouse for each driver they currently employ.

The Clearinghouse will provide FMCSA and employers the necessary tools to identify drivers who are prohibited from operating a CMV based on DOT drug and alcohol program violations and ensure that such drivers receive the required evaluation and treatment before operating a CMV on public roads.

Specifically, information maintained in the Clearinghouse will enable employers to identify drivers who commit a drug or alcohol program violation while working for one employer, but who fail to inform another employer (as required by current regulations). Records of drug and alcohol program violations will remain in the Clearinghouse for five years, or until the driver has completed the return-to-duty process, whichever is later.

About Queries

A query is an electronic check in the Clearinghouse, conducted by an employer or their designated C/TPA, to determine if current or prospective employees are prohibited from operating a CMV due to unresolved drug and alcohol program violations.

There are two types of queries:

- 1 Limited Queries** check for the presence of information in the queried driver's Clearinghouse record. Driver consent is obtained outside the Clearinghouse.
- 2 Full Queries** disclose to employers and designated C/TPAs detailed information about any resolved or unresolved violations in a driver's Clearinghouse record.

If a limited query returns a result that there is information recorded in the Clearinghouse about the queried driver, and the employer follows up with a full query to access the detailed violation information, the employer will only be charged once for both queries.

Employers are charged a fee for conducting queries in the Clearinghouse. Employers must purchase a query plan to ensure they or their designated C/TPAs can conduct queries. C/TPAs cannot purchase queries on behalf of employers.

Purchasing a query plan enables employers, and their designated C/TPAs, to conduct queries on prospective and current drivers in the Clearinghouse.

Beginning fall 2019, registered employers will log into their Clearinghouse accounts to purchase their query plan. Query plans may be purchased from the FMCSA Clearinghouse only.

For more information on the Clearinghouse, please visit <https://clearinghouse.fmcsa.dot.gov/>. Employer and driver resources are available along with a new FAQ page.

Perspective: Improving the Drug and Alcohol Clearinghouse

Jeremy Reymer | Founder and CEO, DriverReach

On Jan. 6, 2020, the Federal Motor Carrier Safety Administration will implement its Drug and Alcohol Clearinghouse, which through pre-employment and subsequent annual reviews of U.S. Department of Transportation drug and alcohol program violations will seek to identify ineligible commercial motor vehicle drivers. With the arrival of this initiative, motor carriers must modify their driver qualification process, and driver recruiters will need to make significant adjustments to their hiring procedures.

While this database will place an additional layer of background screening on candidates, and add work to recruiters' daily responsibilities, it's a necessary step to improve highway safety. The reason is simple: The Drug and Alcohol Clearinghouse will help carriers and recruiters more readily identify applicants ineligible to drive CMVs, preventing inadvertent safety-sensitive hires.

According to FMCSA's Regulatory Impact Analysis, the database is expected to eliminate nearly 900 crashes annually, saving about \$196 million. To meet these predictions, however, all interested parties — including drivers, recruiters, motor carriers and, importantly, regulators — must do their part. There is broad support for the initiative's goals, but there are three improvements FMCSA should make to maximize the database's effectiveness, and minimize the burden on the industry:

Revise Query Requirements

As the process is currently constructed, "full query" requests will be required by motor carriers every time they hire a new driver. Full queries, as opposed to limited queries, allow an employer to access all information associated with any violation. Limited queries, on the other hand, just notify the fleet that there is a transgression on record.

Mandating full queries for every new applicant will place additional administrative burdens on carriers and drivers that, ultimately, will make little difference compared with completing a limited query. Most drivers do not have drug or alcohol testing violations and, therefore, will not have information in the Clearinghouse. A limited query is appropriate since it will be followed by a full query if there is any notice of a transgression on record.

This change would reduce administrative burdens, and speed up the qualification and hiring process. Employee workflow will be streamlined without sacrificing safety, decreasing the burden put on CDL fleets. And, as drivers with disqualifying data become more familiar with how carriers are using the database, they won't apply for positions where they'll expect to be immediately rejected. This, too, will reduce the need for full queries, since just the threat of a limited query will keep these problem drivers at bay.

Streamline Full Query Consent Process

Full queries present an administrative challenge because drivers must provide consent directly within the system. The driver must log into the Clearinghouse and consent to permitting the carrier to process a full query. This process threatens to slow the hiring process, which could compel some candidates to abandon their applications. As an alternative, FMCSA should consider a secure mobile application for processing requests for and grants of query permissions. This would allow the database to be more easily and efficiently accessed.

Expand Carrier Notification Window

Currently, FMCSA rules provide a 30-day window after a query during which a carrier will be notified if there are changes to data within a driver's profile. This presents potential safety concerns, as drivers who commit drug and/or alcohol violations outside that window can continue to operate CMVs without a carrier's knowledge until the time comes for an annual query. The Clearinghouse should alert carriers if such a circumstance arises. For example, a push notification could be sent so carriers receive proper notice, similar to existing employer notification systems for motor vehicle records. To address privacy concerns, alerts could be restricted only to limited query results, giving carriers a chance to quickly request a full query to review and, if necessary, take action.

While the Drug and Alcohol Clearinghouse promises significant improvements in highway safety, it brings with it challenges for carriers that must adapt their procedures to remain compliant. If FMCSA takes action on the suggestions above, those challenges could be greatly reduced.

This article originally appeared in the Aug. 26, 2019 issue of *Transport Topics* and is used by permission.



FMCSA Looks to Revise Hours of Service Regulations

Adam Robinson | Marketing Manager, Cerasis Inc.

Few topics evoke the same passion in truckers and shippers like the ELD mandate and its impact on the enforcement of hours of service (HOS) requirements. The HOS regulations have been around for near a century, and while they were initially designed to reduce safety risks, mandatory enforcement through the ELD mandate may have an opposing effect.

Since drivers have effectively less time to account for unforeseen issues, including slow traffic, increased dwell time, delays in loading and other factors, they must move freight faster, presenting additional risks to other drivers. The ELD mandate sought to simplify the lives of truckers, but it only complicated the matter. However, the Federal Motor Carrier Safety Administration (FMCSA) now looks to change HOS regulations to increase drivers' flexibility, reports Business Insider.

Why Is the FMCSA Proposing Change?

The changes aim to increase flexibility and reduce the risks created by drivers following the implementation of the ELD mandate. The rules focus on extending the workday and giving drivers more opportunities to work, easing constraints placed by the ELD mandate. Discussions among truckers, reported by Freight Waves, suggest drivers are more annoyed than pleased by the announcement and in some other sources, some truckers are fans of the potential HOS regulations changes.

Today's truckers have access to more technology and resources to stay alert and avoid safety risks.

What Exactly Did the FMCSA Proposed Changes Say?

The FMCSA proposed five prominent changes to the 1937 HOS regulations, says Transport Topics, including:

- 1 Connecting the 30-minute break to eight hours of active driving time, and the break may occur by a driver using on-duty, non-driving status, instead of being off-duty.
- 2 Revision to the sleeper-berth exception to divide the period with 10 hours off-duty across two periods, including both a seven-hour period and a three-hour period. Neither would affect the total time allowable and would effectively increase available on-duty time per day.
- 3 Allowing one off-duty break of at least 30 minutes, up to three hours, and pausing the 14-hour window, provided that the driver takes a consecutive 10 hours off-duty at the end of the shift.
- 4 Modification of adverse conditions exception to allow drivers to have an additional two hours, provided ample time is taken to rest at the end of the workday.
- 5 Changes to the short-haul exception, lengthening the drivers' max on-duty hours to 16 and extending the distance radius to 150 air miles, not 100.

How Would More Flexibility Affect Truckers, Shippers, and the Economy?

According to FleetOwner, the proposed changes could save more than \$274 million in the U.S. economy and empower shippers with more freight shipping options. Unfortunately, the three-hour pause that's excluded from the 14-hour day leaves some drivers skeptical. As reported by Freight Waves, drivers had this to say, "[It] is another way for carriers to exploit their drivers." Drivers are paid by the mile, not the clock, so until the FMCSA moves to change how drivers are paid, many will still see HOS regulations as a drain on their wage.

What Should Shippers and Drivers Do Now?

The American Trucking Association advises all interested parties to submit their comments to the FMCSA via the Federal Register notice. The comment period will last for 45 days, and at the end of the period, the FMCSA will make a final decision regarding the implementation or adjustment of proposed changes to HOS regulations.* This commentary period represents the opportunity for shippers, carriers, truckers, and consumers alike to make their voices heard in how the trucking industry must move forward under the heels of the ELD mandate and HOS revisions.

As a result, shippers should encourage their own in-house drivers and business-to-business partners to comment on the matter. Remember that failure to comment makes your business complicit in the takeover of the HOS regulations, so stand up for what you see as reality and opportunity for improvement. Stand up for your beliefs. Also, encourage all third-party partnerships and vendors to voice their opinions on the Register too.

What's the Bigger Picture?

The ELD mandate highlighted the problem with regulations designed 100 years ago being applied and enforced in today's world. Today's truckers have access to more technology and resources to stay alert and avoid safety risks. Unfortunately, the ELD mandate only increased enforcement and thereby led to the higher incident of taking safety risks. The FMCSA recognized this problem and is looking to overhaul the issue with changes to the HOS regulations. Together, truckers, shippers, carriers, consumers, and 3PLs will come together to address the FMCSA and its attempted measures to overhaul the HOS regulations and bridge the divide created by the ELD mandate. Everything changes. Why should HOS regulations change to stay in tune with the modern world?

*The comment period closed Oct. 21. To view the documents and comments, visit <https://www.regulations.gov/docket?D=FMCSA-2018-0248>

Navigating Through the Era of Reptile Theory & Nuclear Verdicts

By Edwin S. Norris, J.D. | Manager – Commercial Liability, Protective Insurance

It is no secret that jury verdict awards against transportation companies are on the rise nationwide. In May 2018, a Harris County, Texas jury awarded \$89.7 million to a mother who lost a child and whose other child was seriously injured despite the undisputed facts that the truck driver was driving below the speed limit, did not lose control and that the claimant vehicle crossed the center line.



The plaintiffs’ counsel persuaded a jury to find in favor of the plaintiff because the truck driver was directed to drive through freezing rain and icy conditions. Post-trial, plaintiffs’ counsel was quoted as saying that the company’s “business model is deadly, dangerous and absolutely must change.”

This verdict was not an isolated event.

In all, there have been more than 40 verdicts against trucking companies in excess of \$10 million in recent years. It has become common practice for plaintiffs’ attorneys to employ the “reptile theory” throughout discovery and at trial while seeking increasingly larger verdicts against transportation companies. This approach seeks to invoke an emotional response in jurors that transportation companies are profit-driven and are not concerned with the general public’s safety.

Transportation company drivers may even be portrayed as the victim of the profit-driven company’s refusal to give them the tools to operate safely. Rather than being asked

to award damages for the alleged injuries to this specific plaintiff, jurors are encouraged to render large verdicts against the transportation company to send a message to the defendant trucking company (and the industry) and to deter the alleged bad conduct on the part of the company going forward.

So, besides having a strong safety policy that is uniformly enforced, what are transportation companies doing to navigate through these issues and better protect themselves?

First, companies should ensure that driver qualification files, hours of service logs, pre-trip inspections, and maintenance records are compliant with federal regulations and overall standards of care. Files, logs, and records need to be maintained and need to be complete. Minor omissions or incomplete files can play into reptile theory. Further, drivers who fail to properly keep logs or complete inspections should be subjected to discipline by the company up to and including termination, in accordance with the Company’s handbook.

Next, companies should require drivers to regularly update their safe-driving training. Companies that train and re-train their drivers on safe driving behaviors demonstrate their commitment to public safety. Besides presumably increasing public safety, documentation of these training efforts provide demonstrable evidence to companies to refute reptile arguments associated with safety and training.

Technology can help promote and demonstrate a Company’s safety culture. Collision-mitigation systems, lane-departure warning and correction systems, driver fatigue-sensing systems, adaptive cruise control, and other avoidance systems may reduce the number and severity of accidents. Companies without these technologies (if available) can expect to be challenged on their commitment to public safety as part of a reptile approach.

Next, inward and outward facing dash cam systems and GPS systems can equip companies with accurate information about unsafe driving behaviors. The American Transportation Research Institute (ATRI) has conducted studies which indicate these types of driving behaviors are

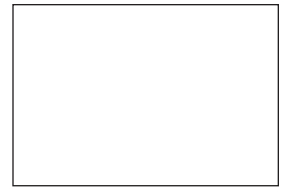
strong predictors of future crash involvement. Companies that review and analyze video and data from their drivers are better positioned to address unsafe driving practices. Should an accident occur that ends up in litigation, the company can demonstrate that steps were taken to identify and prevent any unsafe driving behavior such as that alleged to have been involved in the lawsuit. However, having the systems is not enough. Failure to monitor and/or take action to retrain drivers with an unsafe driving behavior identified by the camera or tracking system can create additional reptile arguments.

The more companies can demonstrate that they are committed and take a proactive approach to safety, the better they will be able to protect themselves and successfully navigate through what has become an increasingly adverse litigation landscape.

Sources: KETV Omaha



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