

Electronic Logging Device Mandate

Allen C. Smith, acsmith@hedrickgardner.com; Austin R. Walsh, awalsh@hedrickgardner.com



Smith



Walsh

On 4/1/18, the grace period ended for compliance with the Electronic Logging Device (ELD) mandate. Drivers caught without ELDs are now subject to being placed out of service for 10 hours, receiving a civil fine, and having points added to their Compliance, Safety, Accountability (CSA) program scores. If drivers are placed out of service in the middle of haul, they may use paper records to get to their final destination but cannot be re-dispatched until an ELD is installed. Whether drivers face a citation and fine will be in the discretion of the inspecting officer. The Federal Motor Carrier Safety Administration (FMCSA) expects the new ELD mandate will decrease the 43,000 violations for false reports of duty status; 32,000 violations for no record of duty status; and nearly 54,000 violations of paper logs not being current that were found in 2017.

The FMCSA has designated CSA scores corresponding to the severity of ELD violations. The scores range from 1 point for violations such as failure to manually add the trailer number to 7 points for failing to provide hours of service (HOS) supporting documents. Failure to have a record of duty status results in a 5-point violation.

On 3/20/2018, the FMCSA issued revised guidelines for all carriers using automatic onboard recording device software (AOBRDs). The revision comes in response to a request from Old Dominion Freight Lines, which had previously received a 90-day ELD waiver due to issues integrating PeopleNet's ELD system upgrades.

For those carriers using AOBRDs before the ELD mandate's effective date on 12/18/2017, the AOBRD systems can still be transferred to replacement trucks but now any new trucks expanding the carrier's fleet may be equipped with AOBRD software until December 16, 2019. At the end of this period, all vehicles must have been transitioned to ELDs. Prior to this revised guidance, any truck expanding a carrier's fleet was required to have an ELD installed by 4/1/2018.

AOBRDs are governed by the 1988 regulatory definitions under 49 CFR § 395.2 and represent a now outmoded technology for recording duty status. At a minimum, AOBRD software must record engine hours, road speed, locations, miles driven, and date and time. ELDs must be synchronized with an engine's electronic control module (ECM) and must capture engine power status, vehicle motion status, total miles driven, total engine hours, engine power status, vehicle speed, vehicle location as well as record of duty status (RODS) data. ELD data must also be readily available to Department of Transportation (DOT) inspectors.

On 3/23/2018, Congressman Brian Babin (R-TX) introduced the Responsible and Effective Standards for Truckers (REST) Act (HR 5417) that would require changes to the HOS rules. Specifically, the REST Act allows one rest break per shift for up to three consecutive hours of off-duty time. This period would not be included in the driver's 14-hour on-duty period limitation and would not affect the required 10-hours of consecutive off-duty time. Currently, drivers coming off 10 consecutive hours off duty have 11 hours of drive time of which only 8 hours may be consecutive before a 30 minute break must be taken.

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Drivers cannot drive beyond the 14th consecutive hour before taking another 10 consecutive hours off duty. The effect of the REST Act would be to extend the driver's allowable work day from 14 to 17 hours and would eliminate the 30-minute break rule. The bill has been referred to the Subcommittee on Highways and Transit.

On 3/13/2018, the FMCSA announced that the ELD waiver for livestock haulers will be extended to 6/18/2018. The previous waiver was set to expire on 3/18/18. The waiver does not affect hours of service (HOS) regulations, which still apply to these commercial motor vehicle (CMV) drivers.

On 2/7/2018, the FMCSA published a clarification on requests for data reviews (RDRs) for certain non-preventable accidents. The crash preventability demonstration program began accepting RDRs on 8/1/2017 for accidents occurring on or after 6/1/2017. Since that time, 2,500 RDRs have been received by the FMCSA. Due to common mistakes in carriers submitting RDRs, the FMCSA issued the 2/7/18 clarification. Accidents eligible for review are those in which a CMV is struck by a motorist driving under the influence, struck by a wrong way motorist, struck in the rear, struck while legally stopped or parked, is involved in suicide by CMV, and in which property damage occurs from an animal strike.

Determining When an Injury Caused by an Idiopathic Condition is Compensable

Joe Delfino, jdelfino@hedrickgardner.com



Delfino

In the practice of workers' compensation law, some of the most difficult claims to evaluate are those dealing with injuries sustained as a result of idiopathic conditions or conditions that arise spontaneously for which the specific cause is unknown. In the context of trucking, this situation usually arises when a driver suffers a heart attack, seizure, or an unexplained fall. While determining whether the injuries sustained as a result of an idiopathic condition, or the condition itself, is compensable necessitates a case by case analysis, there are some general principles to be considered.

In *Cole v. Guilford County*, 259 N.C. 724, 131 S.E.2d 309 (963), Plaintiff fell when her leg gave way as a result of a physical infirmity, the nature of which was unknown, while serving on a jury. In determining that the fall was not compensable, the Court cited the well-established principle in discussing an injury caused by an idiopathic condition,

"The better considered decisions adhere to the rule that where the accident and resultant injury arise out of both the idiopathic condition of the workman and hazards incident to the employment, the employer is liable. But not so where the idiopathic condition is the sole cause of the injury."

In *Dye v. Shippers Freight Lines*, 118 N.C. App. 280, 454 S.E.2d 845 (1995), Plaintiff was a Truck Driver who suffered a heart attack while driving his usual route. Plaintiff filed a workers' compensation claim arguing that the heart attack was brought on by long working hours, a rough ride caused by a nearly empty truck, equipment failure causing the temperature in his truck to be extremely high and prior stress related to his job conditions. In determining that the claim was not compensable, the Court found that Plaintiff had worked the long hours for which he complained of for over six months, that Plaintiff was driving a shorter route than usual at the time of the heart attack and that Plaintiff was generally accustomed to his work hours and work conditions.

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In *Vause v Vause Farm Equip. Co.*, 233 N.C. 88, 63 S.E.2d 173 (1951), Plaintiff was a driver who had a history of traumatic epilepsy. While driving, Plaintiff felt like he was going to have a seizure, so he pulled his truck over and laid down. Plaintiff then experienced a seizure, fell from his position and suffered a fractured and dislocated hip and a fractured pelvis. The Commission determined that the claim was compensable as Plaintiff was required to drive his truck to perform his work which subjected him to a particular hazard. The Court reversed the Commission and concluded that the claim was not compensable. The Court stated, "...the evidence here discloses no causal connection between the operating of the truck and the injury." The Court further stated,

"We perceive in this evidence no showing that any hazard of the employment contributed in any degree to the unfortunate occurrence. The evidence affirmatively shows that it was solely the force of his unfortunate seizure that moved him from his position of safety to his injury. The cause of the fall is not in doubt. It is not subject to dual inferences. All of the evidence shows that the cause of the plaintiff's fall was independent of, unrelated to and apart from the employment."

As can be seen in the above-referenced cases, simply because an employee suffered an injury or medical condition that at first glance appears to be unrelated to his employment, there is no guarantee that the Commission or a Court will not eventually deem the injury or condition compensable. In fact, the Commission and Courts will take an in-depth look at the circumstances surrounding the injury or medical condition to determine if the hazards of the employment contributed in any way to said injury or medical condition.



Attorney Spotlight: Pete Bigham, Jr.

Pete practices civil litigation in the Charlotte office. He has assisted litigating and adjudicating complex substantive and procedural matters involving adverse and contested bankruptcy proceedings, agency law, real property, insurance coverage, medical malpractice, wrongful death, and search and seizure issues.

Q: Why did you become a lawyer?

PJB: I became a lawyer because I want to see justice done. Often, the focus is on plaintiffs and their injuries, however, my clients have a story and rights to protect as well.

Q: What is your proudest moment?

PJB: My proudest moment was posing for a picture with my one year old daughter at my law school graduation. I hope she one day looks at that picture and realizes that anything is possible with hard work and the support of friends and family.

Q: What keeps you busy on the weekends?

PJB: On the weekends I enjoy exploring the world with my daughter and wife. My daughter recently learned how to pick up worms; I see fishing in the near future!

Q: What is your favorite vacation destination?

PJB: A quiet cabin in the mountains or a quiet bungalow at the beach.

Q: What motivates you?

PJB: After college, I worked in the construction and logistics industries. I tied steel, finished concrete, roofed houses, built swimming pools, stacked and tied down lumber on flatbed trucks, and hand loaded over the road tractor trailers. During those years, I witnessed a few hardworking men and women suffer significant losses as a result of over-reaching law suit verdicts. I want to make sure that hard-working people like them are afforded the justice and protection they deserve.

Hedrick Gardner Trucking & Transportation Team

Allen C. Smith
Practice Group Leader
Civil Litigation
Charlotte
704.319.5449

R. Daniel Addison
Workers' Compensation
Columbia
803.727.1201

Jeffrey H. Blackwell
Civil Litigation
Wilmington
910.795.2208

Matthew D. Glidewell
Workers' Compensation
Charlotte
704.319.5432

David L. Levy
Civil Litigation
Charlotte
704.319.5426

Thomas W. Page
Workers' Compensation
Charlotte
704.319.5446

Kristie L. Hedrick
Civil Litigation
Raleigh
919.719.3718

Martha W. Surles
Workers' Compensation
Charlotte
704.319.5438

Gerald A. Stein, II
Civil Litigation
Charlotte
704.319.5464

Austin R. Walsh
Civil Litigation
Charlotte
704.602.8010

**Charlotte
Wilmington**

**704.366.1101
910.509.9664**

**Raleigh
Columbia**

**919.832.9424
803.727.1200**

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