

J. J. Keller & National Private Truck Council (NPTC) Webcast
The New Coercion Rule and Whistleblower Protection
Wednesday, May 18th, 2016



The New Coercion Rule and Whistleblower Protection

Gary Petty
President & CEO
National Private Truck Council

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Meet Your Presenters

Gary Petty
President & CEO
National Private Truck Council

Tom Moore, CTP
Senior Vice President
National Private Truck Council

Tom Bray
Senior Transportation Management Editor
J. J. Keller & Associates

Mike Schwarsenska, CTP
Director of Transportation
Brakebush Transportation

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Coercion and Harassment

Thomas Bray
Sr. Editor, Transportation Management
J. J. Keller & Associates, Inc.

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Coercion Rule

- **Prohibits coercion of a driver**
 - Went into effect 1/29/16
 - Provides a definition of coercion
 - A threat by a motor carrier, shipper, receiver, or transportation intermediary, or their respective agents, officers or representatives, to withhold business, employment or work opportunities from, or to take or permit any adverse employment action against, a driver in order to induce the driver to operate a commercial motor vehicle under conditions which the driver stated would require him or her to violate one or more of the regulations, which the driver identified at least generally



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Coercion Rule




- **Key points:**
 - Applies to carriers, shippers, receivers, and brokers, AND their agents
 - Dispatchers and maintenance supervisors are "agents!"
 - The "threat" once the other party is told of the situation is what makes it coercion



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Coercion Rule

- **What is NOT coercion**
 - Reassigning a load to a driver with hours and/or a good vehicle is NOT coercion, provided there was no threat first
 - A shipper choosing to use a different carrier that promises to provide drivers with hours and good equipment is not coercion
 - Asking a driver to leave private property is NOT coercion




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Coercion Rule

- **The rule also...**
 - Provides procedures for drivers to report incidents of coercion
 - Established "rules of practice" FMCSA must follow in response to allegations of coercion
 - FMCSA must investigate all "non-frivolous" complaints of coercion




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Coercion Rule

- **Historical problem areas:**
 - Ill or fatigued
 - Hours-of-service
 - Vehicle defects



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Harassment Prohibited

- Different rule found at §390.36 (part of ELD rule)
- **Harassment defined:**
 - Using the ELD system to harass a driver into driving when ill or fatigued or when driving would violate HOS regulations



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Harassment Prohibited

- Harassment protections:
 - Driver must have access to all records in the ELD system
 - System must "mute" during sleeper periods
 - Specific complaint and investigation procedures
 - > 90 days to file complaint
 - > FMCSA must investigate if complaint determined to be non-frivolous




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Don't Forget!

- Be aware: STAA whistleblower protections are still out there!
- These apply if you take action against a driver for:
 - Reporting a safety concern to you
 - Reporting a safety concern to a safety agency (DOT or OSHA)
 - Refusing to operate in an unsafe equipment or in violation of the safety regulations after reporting it to you
 - Providing information to a safety agency during an investigation
- Penalties approaching \$1,000,000 in some cases



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Beyond Compliance

Tom Moore CTP
Sr. Vice President
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The Challenge

- Most of our members report that coercion, harassment, whistleblower rules are a non-issue
- Obviously want to ensure they don't pressure someone to go out when they shouldn't
- But fleets also have a business to run and need to manage patterns of behavior
- Balancing the concern around fit for duty / coercion with attendance policies
- Do it right!

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The Solution

- Understand the regulations
 - Basic premise is that someone is trying to tell you something is wrong
- Develop good hiring practices
- Enhance training
- Upgrade management disciplines
- Improve communications processes
- Embrace technology/data management
- Establish good disciplinary policies

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High Hiring Standards

- Make sure you conduct probing, situationally based interviewing
- Ensure top-notch background searches
- Follow-through with peerless onboarding



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Comprehensive Training

- From the outset, ensure transparency in terms of goals, expectations
- Everyone must understand the policy
- Create transparency




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Management Discipline

- Educate, educate, educate
- Take steps to correct the situation if the driver or other employee is correct, or
- If the concern is unfounded, discuss the situation with the driver or employee and explain why the activity is safe and/or legal.



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Pro-Active Communications

- Communicate early and often
- Drivers need to understand clearly what their role is and how the company views them
- Underscore that commitment often
- Listen and take action



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Technology / Good Data Management

- Technology provides enhanced visibility
- Use it to ensure safe and efficient operations
- Keep in mind: If you don't measure it, you can't manage it and you won't improve it.
- Make sure employees/drivers are part of the process
- Journey to create a culture of safety




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Consistent and Effective Discipline

- Don't shoot the messenger
- Document effectively
- Progressive discipline
- The complaint isn't the problem, it's how the carrier handles it!
- The correct answer is not, "we punish the driver or employee" or worse, "we get rid of the problem" (the driver or employee)!



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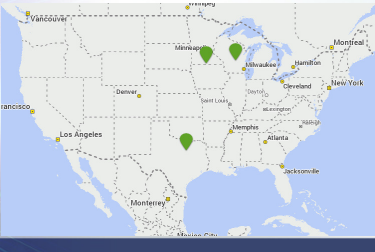


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Brakebush Brothers



Mike Schwersenska
Brakebush
Transportation

- Westfield, WI
- Irving, TX
- Wells, MN

Our Fleet




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- 34 OTR Trucks (Operating Nationwide)
- 2 Local Trucks in TX
- 85 Reefer Trailers
- Outbound product at -5* and 28*
- 2015- 2,983,321 Miles
- 65,956,061 # of Chicken Delivered
- 112,536,881 # Managed






CSA BASICS Overview		24-Month Record Ending December 28th, 2015	
Unsafe Driving	Operation of a CMV in a manner that endangers the operation of carrier's motor vehicle, or in non-compliance with the hours of service (HOS) regulations.	5%	
Hours of Service (HOS) Compliance	Operation of a CMV in a manner that endangers the operation of carrier's motor vehicle, or in non-compliance with the hours of service (HOS) regulations.	0%	
Driver Fitness	Operation of a CMV by a driver who is not qualified to operate a CMV due to lack of training, experience or medical qualifications.	0%	
Controlled Substances and Alcohol	Operation of a CMV by a driver who is impaired due to alcohol, illegal drugs, and/or use of prescription or over-the-counter medications.	0%	
Vehicle Maintenance	Failure to properly maintain a CMV and/or to properly prevent additional faults.	0%	4.5 Inspections w/ Violations

Coercion



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- The rule states that **no one** may threaten a driver with future employment or business action in an attempt to get the driver to violate the safety regulations.
- **No one**
 - Carrier
 - Shipper
 - Receiver
 - Broker
 - Agents

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Our Take

- Coercion shouldn't have been in our operation prior to the rule.
- Mean what you say and say what you mean.
- Work on our "Safety First" philosophy throughout the company.

▪ TRAIN TRAIN TRAIN.....



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HOS Training

- Hours of Service may have been just for the Private Fleet Team.

• Now we train:

- Receiving
- Shipping
- Purchasing
- Sales
- Logistics
- Anyone that may speak to a driver.



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Vehicle Defects

- Maintenance supervisor was trained and handled all repairs.

• Now:

- All Operations
- Management
- Fleet Technicians

- Communication of pending maintenance issues via email so everyone is on the same page.



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Operations

- **Most deal with a constant back and forth with operations/safety & maintenance.**
 - Safety First eliminates some of the disagreements.
 - Everyone cross trains on each department.
 - Work with relay options on JIT loads

- **Drivers must also be trained.**
 - What is and what is not coercion.
 - **#1-NOT COERCION**
 - Being kicked off a shippers property when out of hours.



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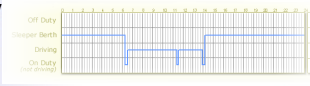
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Technology

- **Brakebush Transportation has had ELD's since 09.**




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- **Offers a new level of visibility**
 - Available Hours
 - Started day (14 HR rule)
 - Restart


- **Assist Operations with load planning.**
 - Will driver have time to make pick
 - Will driver need a relay
 - Etc

Load Planning


- **Dispatching**
 - Outbound loads are multi stop (driver unload)
 - Drivers are dispatched on a first in first out plan.
 - Every attempt is made to keep a driver in a lane they're comfortable with.
 - Most will know reload prior to being empty.
 - Our backhaul dispatchers communicate the driver HOS prior to taking any load.



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Communication

- One of the difficult issues facing most fleets today.
- Accurate information getting to drivers from the company.
- Social Media
- XM Radio
- Other Drivers
- New Operations Folks



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Communications (cont.)

- Start with a great interview and explain the good and bad of working at your company.
- Driver orientation- let the drivers know you have an open door policy and YOU want to know about any safety concerns they may have.
- Take action and follow through!
- Monthly news letter of conference call.



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