

PERSONAL CONVEYANCE: PRETEXT TO HOURS OF SERVICE VIOLATIONS?

Calculating a truck driver's hours of service (HOS) can be complicated enough, but add to that a truck driver's claim of driving under a personal conveyance, and the determination of whether a truck driver has unlawfully exceeded HOS can become even trickier. In order to combat this defense, it is important to understand what a personal conveyance is, under what circumstances it is permissible, and whether a defendant trucking company has a policy (or no policy at all) prohibiting or permitting personal conveyances. Personal conveyances are very fact specific, so it is crucial to know what kind of information to seek in discovery in order to combat this oftentimes sham defense.

The Federal Motor Carrier Safety Administration (FMCSA) defines "personal conveyance" as "the movement of a commercial motor vehicle (CMV) for personal use while off-duty." In essence, a personal conveyance allows a commercial truck or bus driver the ability to *exceed, lawfully*, the HOS limits, but only under certain circumstances. For years, those circumstances were vague, but in June 2018, the FMCSA provided guidance as to and even specific examples of what qualifies as a personal conveyance. While the FMCSA's express guidance and examples do provide some clarification on the subject of personal conveyance, the specific facts of each case will ultimately determine whether a personal conveyance does in fact apply. Thus, it will be important to tailor discovery requests aimed at gathering information relevant to this issue.

According to the FMCSA's written guidance, drivers may record personal conveyance time as "off-duty only when the driver is relieved from work and all responsibility for performing work by the motor carrier." According to the FMCSA, some examples of personal conveyance include: 1) traveling from lodging (e.g., truck stop or hotel) to restaurants and entertainment facilities; 2) traveling between the driver's terminal and his residence; 3) traveling to a nearby, reasonable, safe location to obtain required rest after loading or unloading; 4) moving a CMV at the request of a safety official (e.g., police officer); and 5) traveling home after working at an offsite location. In its June 2018 Guidance, the FMCSA also provided examples that do **not** qualify as personal conveyance, some of which include: 1) bypassing available resting locations in order to get closer to the next loading or unloading point; 2) driving to fulfill a business purpose, such as operating with an empty trailer in order to retrieve another load; 3) transporting a CMV to a facility for vehicle maintenance; and 4) traveling to a motor carrier's terminal after loading or unloading from a shipper or receiver.

Given the FMCSA's Guidance and specific examples, discovery to both the truck driver and trucking company should seek information about the basis for a claim of personal conveyance (in other words, why was the driver operating beyond the HOS limits?); where the CMV was prior to the crash; where the CMV was headed at the time the crash occurred; what attempts the driver and/or dispatcher made to locate a nearby, reasonable, safe location to rest; the locations of the nearest reasonable, safe locations to rest (which may be in the opposite direction of the next load); and whether anyone (such as a safety official) directed the driver to move the CMV. Simply put, the purpose of a personal conveyance must be *personal* and the driver must be *off-duty* at the time, meaning that the employer relieved the driver from work and all responsibility to the employer. Check the dispatch records, ask questions about conversations and messages between the drivers and dispatchers or employers, and figure out whether a driver

was attempting to advance his load, get closer to his next loading site, or do anything “for the commercial benefit of the carrier.”

As for carriers, tailor discovery to information about personal conveyance policies (are there any such policies, and if so, what are the conditions and limitations), and look to industry standards for personal conveyance policies. While the FMSCA *allows* the use of personal conveyance, the FMCSA *does not mandate* the use of personal conveyance. In other words, carriers ultimately decide whether to allow, prohibit, or limit the use of personal conveyance by their drivers. This cuts both ways, as policies *prohibiting* personal conveyance could increase the danger (for example, a truck driver out of hours pulling off in a dangerous spot, rather than driving to the nearest safe resting spot, becomes a hazard), while policies *permitting* personal conveyance could be equally dangerous (for example, allowing drivers to drive unlimited personal conveyance hours to get home). If the carrier does permit the use of personal conveyance, find out what limitations, if any, the carrier has established for such personal conveyance. While the FMSCA does not put any limits on the amount of time or distance a driver may operate under a personal conveyance, it does permit “[m]otor carriers [to] establish personal conveyance limitations either within the scope of, or more restrictive than, the [FMSCA’s Guidance].” Carriers should be clear on their personal conveyance policy, if one exists, and drivers should be educated and trained on - and comply with - said policies.

As a final note, personal conveyance does not provide drivers unfettered ability to drive while fatigued or otherwise unsafe. The FMSCA expressly provides that “[p]ersonal conveyance does not reduce a driver’s or motor carrier’s responsibility to operate a CMV safely.” In other words, even if a personal conveyance is permissible, both the CMV driver and motor carrier have an ongoing duty to ensure that a CMV is nonetheless safely operated. Given the FMCSA’s express guidance, there are multiple ways to combat any claim personal conveyance, so do not be caught off guard with this “defense.”