

**2018**

**Texas Trial Lawyers Association**

**Big Cases in the Big Easy: Commercial Vehicles and Workplace Injuries**

February 15 – 16, 2018

Bourbon Orleans Hotel ▪ New Orleans, Louisiana

**Commercial Vehicles:  
They Are Not Just 18-Wheelers**

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# COMMERCIAL VEHICLES: THEY ARE NOT JUST 18-WHEELERS

By Mike Davis

The rules and regulations for commercial motor vehicles apply to more than just tractor trailers, including some vehicles that do not require a commercial driver's license to operate and vehicles not operated for compensation.

## Commercial Motor Vehicle

Under federal regulations, a commercial motor vehicle engaged in transporting goods or passengers in interstate commerce is defined as any vehicle that

- Has a gross vehicle weight rating or combined weight rating of 10,001 pounds or more; or
- Is designed or used to transport more than 8 passengers, including the driver, for compensation; or
- Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or
- Is used to transport hazardous materials in quantities requiring a placard.

49 C.F.R. § 390.5. For purposes of defining a vehicle as a commercial motor vehicle, the vehicle's placarded gross vehicle weight rating (GVWR) controls even if the vehicle's actual weight is less than 10,001 pounds. It is possible to buy a pickup truck straight from the factory with a GVWR in excess of 10,001 pounds. If that pickup is being used in interstate commerce, the pickup is considered a commercial motor vehicle. Similarly, a large van, shuttle, or rental truck may qualify as a commercial motor vehicle. Any large vehicle or trailer used as part of a person's occupation could qualify – for example a professional horse or dog trainer's trailer.

If a vehicle meets the § 390.5 definition of commercial motor vehicle, the driver and the vehicle must comply with the Federal Motor Carrier Safety Regulations (FMCSR). Compliance requires more than just putting a DOT number on the vehicle. The vehicle and the operator must comply with additional requirements of the FMCSR. For example,

- The driver must be qualified under Part 391, including having a driver application form on file (§391.21) and maintaining a driver's qualification file (§391.51);
- The vehicle will need to be equipped in accordance with Part 393;
- The vehicle will need to undergo a scheduled maintenance program (§396.3), and be inspected before and after each trip (§§392.7, 396.11, & 396.13);
- The driver will be subject to the hours-of-service rules under Part 395;
- They driver will be subject to safety requirements in Part 392 prohibiting texting or using handheld devices or having a radar detector in the vehicle.

The federal regulations provide a different definition for commercial motor vehicle for commercial driver's license (CDL) and drug and alcohol testing purposes. The federal drug and alcohol testing requirements under Part 382 and the commercial driver's license requirements under Part 383 apply only to a vehicle that

- Has a gross vehicle weight rating or combined weight rating of 26,001 pounds or more; or
- Is designed or used to transport more than 16 passengers, including the driver; or
- Is used to transport hazardous materials in quantities requiring a placard.

49 C.F.R. § 382.107 & §383.5. This distinction can lead to confusion because a vehicle may qualify as a commercial motor vehicle for purposes of the application of many FMCSR, but not require a CDL to operate.

A commercial motor vehicle operated solely intrastate in Texas is defined in 37 Tex. Admin. Code § 4.11(c)(1) as a vehicle that

- Has a gross vehicle weight rating or combined weight rating of 26,001 pounds or more; or
- Any tow truck regardless of weight; or
- Is a farm vehicle or combination of farm vehicles with a weight rating of 48,000 pounds or more; or
- Is designed or used to transport more than 15 passengers, including the driver; or
- Is used to transport hazardous materials in quantities requiring a placard; or
- Is operated by a motor carrier transporting household goods for compensation regardless of weight.

Intrastate commercial motor vehicles that fall within this definition are governed by the FMCSR, Parts 40, 380, 383, 385, 386, 387, 390-93, and 395-397, subject to certain exemptions found in the Texas Administrative Code or Texas Transportation Code. 37 Tex. Admin. Code §§ 4.11 & 4.12. For example, Texas exempts certain vehicles used in oil or water well servicing or drilling, mobile cranes, vehicles transporting seed cotton, and concrete pumps. 37 Tex. Admin. Code § 4.12(a)(1).

### **Motor Carrier**

A motor carrier is a person or entity that transports cargo or passengers as a for-hire or private carrier and includes the carrier's agents, officers, representatives, and employees. 49 C.F.R. § 390.5. The term motor carrier also includes a private motor carrier that provides "transportation of property or passengers, by commercial motor vehicle, and is not a for-hire motor carrier." *Id.* Examples of a private motor carrier would be a company vehicle delivering

its own products to the company's stores or a hotel's complimentary shuttle service for its guests. In Texas, motor carrier is defined as "an individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a road or highway in this state." Texas Transportation Code § 643.001(6).

Under the federal regulations, there are two types of private motor carrier of passengers – business and nonbusiness. A business private motor carrier of passengers "means a private motor carrier engaged in the interstate transportation of passengers which is provided in the furtherance of a commercial enterprise and is not available to the public at large." 49 C.F.R. § 390.5. Examples of a business private motor carrier of passengers would be a commercial motor vehicle used to transport a company's own employees to job sites or professional musicians using buses for concert tours. A nonbusiness private motor carrier of passengers is a carrier of passengers who does not meet the definition of a business private motor carrier of passengers. *Id.* Examples of a nonbusiness private motor carrier of passengers would be a church, private school, or charitable organization's vehicle used to transport its members to events, but not for a profit.

### **Registration & Identification Requirements**

Interstate commercial motor carriers must register with the Federal Motor Carrier Safety Administration (FMCSA) and obtain a DOT number. 49 C.F.R. § 385.301. For-hire carriers must also obtain operating authority. *Id.* An interstate commercial vehicle must have the name and DOT number of the carrier on both sides of the vehicle. 49 C.F.R. § 390.21.

An intrastate motor carrier must register with the Texas Department of Motor Vehicles if it is operating a commercial motor vehicle. Texas Transportation Code § 643.051. This

registration requirement is subject to certain exemptions listed in Texas Transportation Code § 643.002. Each vehicle is required to have the identification markings required by 49 C.F.R. § 390.21. Texas Transportation Code § 642.002.

### **Commercial Driver's License Requirements**

Anyone who operates an interstate commercial motor vehicle, as defined in Part 383 of the FMCSR, must have a commercial driver's license. 49 C.F.R. § 383.3. To obtain a commercial driver's license, a driver must comply with the knowledge, skills, and testing requirements set out in Part 383. Texas has not explicitly adopted Part 383, but the commercial driver's license provisions adopted by Texas in Chapter 522 of the Texas Transportation Code are similar to Part 383.

In Texas, an operator of an intrastate commercial vehicle must have a commercial driver's license. Texas Transportation Code § 522.011. To be eligible for a Texas commercial driver's license, a driver must: live in Texas; pass a knowledge and skills test which complies with the standards of Part 383; and satisfy the requirements imposed by federal or state law. Texas Transportation Code § 522.022. The Texas Transportation Code provides for three classes of license. A Class A license is required to operate any combination of vehicles with a weight of 26,001 pounds or more if the weight of the towed vehicle exceeds 10,000 pounds. Texas Transportation Code § 522.041(b). A Class B license is required to operate a single vehicle with a weight rating of 26,001 pounds or more, a vehicle rated 26,001 pounds or more towing a trailer rated 10,000 pounds or less, or a vehicle designed to transport 24 or more passengers. Texas Transportation Code § 522.041(c). A Class C license is required to operate any single vehicle or combination of vehicles not covered by Class A or B if the vehicle is designed to transport 16-23

passengers or is used to transport hazardous materials requiring a placard. Texas Transportation Code § 522.041(d).

Chapter 522 exempts certain vehicles from the Texas commercial driver's license requirements:

- Vehicles operated or controlled by a farmer or his employee used to transport agricultural products, farm machinery, or farm supplies to or from a farm. To qualify for this exemption the vehicle must not be used in the operations of a common or contract carrier, and it must be used within 150 miles of the farm
- Firefighting or emergency vehicles.
- Military vehicles.
- Recreational vehicles for personal use.
- Vehicles operated by an air carrier operated exclusively on the premises of an airport.
- Vehicles used exclusively to transport seed cotton modules or cotton burrs.

Texas Transportation Code § 522.004.

### **Driver Qualifications**

To be qualified to drive an interstate commercial motor vehicle, a driver must:

- Be at least 21 years old;
- Be able to read and speak English;
- Be able to safely operate the type of vehicle being operated;
- Be physically qualified under §§391.41-391.49;
- Have a currently valid commercial driver's license;

- Have provided the carrier a list of traffic violations as required by §391.27;
- Not be disqualified under §391.15;
- Have successfully completed a driver's road test.

49 C.F.R. §391.11. The Texas rules for intrastate drivers are the same as §391.11 except that the minimum driving age in Texas is 18, Texas Transportation Code §522.027, and Texas provides for certain medical waivers related to vision and limbs. 37 Tex. Admin. Code §§ 16.9 & 16.14.

### **Driver Training**

Interstate drivers must have the knowledge and training required in 49 C.F.R. §§383.110-383.123. In addition, entry-level drivers, drivers with less than one year of experience, must meet the entry-level driver training requirements in 49 C.F.R. §§380.501-380.513. Entry-level training must include driver qualifications requirements, hours-of-service rules, driver wellness, and whistleblower protection. 49 C.F.R. §380.503. Texas has adopted only the entry-level training requirements for intrastate drivers. 37 Tex. Admin. Code §4.12(b)(10).

### **Hours-of-service**

Subject to limited exceptions in 49 C.F.R. 395.1, the hours-of-service requirements for interstate drivers transporting property are:

- a driver may not operate a commercial motor vehicle without first taking 10 consecutive hours off duty;
- a driver cannot operate a commercial motor vehicle after being on duty more than 14 hours following 10 consecutive hours off duty and a driver must take an off duty break for 10 consecutive hours after each 14-hour period;

- a driver may only operate a commercial motor vehicle for a total of 11 hours during the 14-hour period;
- a driver must take a 30-minute break after 8 consecutive hours of driving;
- a driver cannot operate a commercial motor vehicle after having been on duty more than 70 hours in any consecutive eight-day period, or 60 hours in any consecutive seven-day period if the motor carrier operates less than seven days per week; and
- a driver may restart a seven or eight-day period after taking 34 or more consecutive hours off duty.

49 C.F.R. § 395.3. The hours-of-service requirements for interstate drivers transporting passengers are:

- the driver may not operate a commercial motor vehicle more than 10 hours following 8 consecutive hours off duty;
- a driver cannot operate a commercial motor vehicle after being on duty more than 15 hours following eight consecutive hours off; and
- a driver cannot operate a commercial motor vehicle after having been on duty more than 70 hours in any consecutive eight-day period, or 60 hours in any consecutive seven-day period if the motor carrier operates less than seven days per week.

49 C.F.R. § 395.5.

The Texas intrastate hours-of-service rules apply to commercial motor vehicles whether transporting cargo or passengers. The Texas rules provide:

- a driver cannot operate a commercial motor vehicle more than 12 hours following eight consecutive hours off duty;
- a driver cannot operate a commercial vehicle after being on duty more than 15 hours after eight consecutive hours off duty;
- a driver cannot operate a commercial motor vehicle after having been on duty more than 70 hours in any seven-day period; and
- a driver may restart a seven-day period after taking 34 or more consecutive hours off duty.

37 Tex. Admin. Code §§ 4.12(a)(2), 4.12(b)(2).

Motor carriers and their drivers are required to maintain logs of their driving and duty status. 49 C.F.R. §395.8 Both the interstate and the intrastate regulations provide some exemptions for vehicles operating within a certain geographical range of their home base. 49 C.F.R. § 395.1(e)(1)(i); 37 Tex. Admin. Code § 4.12(a)(4).

### **Drug & Alcohol Testing**

Drivers required to have a commercial driver's license are subject to drug and alcohol testing under 49 C.R.F. §382.103. Exemptions applicable to other safety rules do not apply to drug and alcohol testing. All states, including Texas, follow the federal drug and alcohol testing regulations. 37 Tex. Admin. Code § 4.21 governs reporting of positive drug or alcohol test results in Texas.

### **Financial Responsibility**

Interstate motor carriers transporting property are required to maintain the following minimum levels of financial responsibility: \$750,000 for commercial motor vehicles transporting

non-hazardous materials; and \$5,000,000 for vehicles transporting hazardous substances.

49 C.F.R. §§ 387.7 & 387.9. Interstate passenger carriers are required to maintain the following minimum levels of financial responsibility: \$1,500,000 for vehicles with a seating capacity of 15 or less; and \$5,000,000 for vehicles with a seating capacity of 16 or more. 49 C.F.R. §§ 387.31 & 387.33.

Intrastate motor carriers in Texas must meet the following financial responsibility requirements:

- Private or for-hire vehicles in excess of 26,000 pounds \$500,000
- Household goods movers in excess of 26,000 pounds \$500,000
- Household goods movers less than 26,000 pounds \$300,000
- Farm trucks in excess of 48,000 pounds \$500,000
- Bus operators of vehicles designed to transport 26+ passengers \$5,000,000
- Bus operators of vehicles designed to transport 15-26 passengers \$500,000
- Foreign domiciled bus designed for 16+ passengers \$5,000,000
- Foreign domiciled bus designed for less than 16 passengers \$1,500,000
- Commercial school bus operators \$500,000

Transporters of placarded hazardous substances are subject to insurance requirements of \$1,000,000 to \$5,000,000 depending upon the substance and the amount. See Texas Department of Motor Vehicles Form 1899 attached as Appendix A.

## **Private Motor Carriers of Passengers (PMCP)**

### **Business PMCP**

Business private motor carriers of passengers (PMCP) provide transportation for a commercial purpose but are not commercial businesses providing transportation for the general public. For example, a company that uses buses to transport its own employees would be considered a business PMCP. These carriers must meet many of the requirements of the FMCSR, but are exempt from some provisions. Business PMCP are not subject to the federally mandated insurance requirements. They are exempt from the road test requirements and investigation requirements of Part 391. 49 C.F.R. §391.69.

### **Non-Business PMCP**

A non-business PMCP provides private transportation that is not in furtherance of a commercial activity. For example, an organization providing transportation for its members would be considered a non-business PMCP. These carriers are not subject to the federal insurance requirements. They are exempt from the investigation, road test, and recordkeeping requirements of Part 391. 49 C.F.R. §391.68. And, they are exempt from many of the paperwork and recordkeeping requirements of Parts 390, 395, and 396.

### **Tow Trucks**

In addition to the requirements imposed by the FMCSR for tow trucks considered commercial motor vehicles, Texas regulates tow trucks under Chapter 2308 of the Texas Occupational Code and the administrative rules of the Texas Department of Licensing and Regulation. Under these regulations, a tow truck may not operate on the public streets without a tow truck permit. 16 Tex. Admin. Code § 86.200(a). A separate permit is required for each

truck. 16 Tex. Admin. Code § 86.200(b). The permit is valid for one year. 16 Tex. Admin. Code § 86.200(c).

There are three types of tow truck permits – Incident Management, Private Property, and Consent. An Incident Management towing permit is required to perform a non-consent tow initiated by a peace officer. 16 Tex. Admin. Code § 86.201(a). An Incident Management permit may be used to perform a Private Property tow and a Consent tow. 16 Tex. Admin. Code § 86.200(c). A Private Property towing permit is required to perform a non-consent tow authorized by a parking facility. 16 Tex. Admin. Code § 86.202(a). A Private Property permit may also be used for a Consent tow, but not an Incident Management tow. 16 Tex. Admin. Code § 86.202(c). A Consent towing permit allows towing authorized by the vehicle owner. 16 Tex. Admin. Code § 86.203(a). A Consent permit may only be used for a Consent tow. 16 Tex. Admin. Code § 86.203(c). Each type of permit requires an application, proof of insurance, and submission of a criminal background check. A permit can be revoked for false or incomplete information on an application or for conviction of a felony or a misdemeanor punishable by jail time or a fine exceeding \$500. 16 Tex. Admin. Code § 86.204.

A tow truck operator is required to obtain a towing operator's license. 16 Tex. Admin. Code § 86.207. A license is valid for one year. 16 Tex. Admin. Code § 86.207(b)(1). In order to qualify for an Incident Management license or a Private Property license, the operator must pass a certification test. 16 Tex. Admin. Code §§ 86.209 & 86.210. Renewal of a towing operator's license requires four hours of continuing education, including one hour addressing roadway safety. 16 Tex. Admin. Code § 86.250(b). A first-time renewal of an Incident Management license requires eight hours of continuing education. 16 Tex. Admin. Code § 86.250(j).



subject to local ordinance or rule. For example, City of Austin ordinance 12-5-5 requires that a delivery vehicle must display the name of the business on each side of the vehicle. These businesses may be vicariously liable for the conduct of the vehicle driver and should have commercial liability coverage in excess of the minimum individual liability insurance limits.

A company is vicariously liable for the negligence of its employees as well as its agents. *G.T.E. S.W., Inc. v. Bruce*, 998 S.W.2d 605, 617-18 (Tex. 1999). Whether an individual is an employee of a company depends primarily on whether the company has the right to control the individual. *St. Joseph Hosp. v. Wolff*, 94 S.W.3d 513, 542 (Tex. 2002); *Golden Spread Council, Inc. v. Akins*, 926 S.W.2d 287, 290 (Tex. 1996); *Newspaper, Inc. v. Love*, 380 S.W.2d 582, 590 (Tex. 1964). Texas courts look to whether the company has the right to control an individual; the actual exercise of control is irrelevant. *Bell v. VPSI, Inc.*, 205 S.W.3d 706, 713-714 (Tex.App.–Fort Worth, 2006, no pet.); *INA of Texas v. Torres*, 808 S.W.2d 291, 293 (Tex.App.–Houston [1<sup>st</sup> Dist.] 1991, no writ).

When a written contract labels an individual an “independent contractor,” the label is not absolute, particularly if the contract is a mere subterfuge that is designed to conceal the true relationship between the parties. *Durbin v. Culberson County*, 132 S.W.3d 650, 659 (Tex.App.–El Paso 2004, no pet.) The true relationship between the parties stems from the following factors, which are used to determine the extent of the company’s right of control:

- the independent nature of the person’s business;
- the person’s obligation to furnish necessary tools, supplies, and materials to perform the job;
- the right to control progress of the work, except as to the final results;

- the time for which the person is employed; and
- the method of payment, whether by time or by job.

*Texas A&M Univ. v. Bishop*, 156 S.W.3d 580, 584-85 (Tex. 2005).

Businesses which use a vehicle for any business-related purpose should have commercial auto liability insurance coverage – either as a component of the business’ comprehensive general liability policy or as a separate policy. Businesses whose employees operate their own personal vehicles for company business-related purposes may have coverage under a Hired Auto & Non-Owned Auto Liability endorsement. Businesses also frequently have an excess or umbrella policy. Discovery in a case involving a vehicle which is potentially serving a business-related purpose should include requests to identify all commercial auto liability coverage, any non-owned auto liability coverage, and any excess or umbrella policy. When settling with an individual driver under circumstances which suggest a potential business purpose, it may be prudent to obtain an affidavit that the vehicle was not being operated for a business purpose and that no additional coverage exists.

## Appendix A



Form 1899 (Rev. 2/04)  
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### Insurance Requirements

Texas Department of Transportation, Motor Carrier Division  
PO Box 12984, Austin, Texas 78711-2984  
(800) 299-1700 (Select 2, then 1 from the automated menu)

Before an application is approved, an insurance company authorized to do business in Texas must provide proof of required insurance. Liability insurance coverage is filed on a Form E or E2 and is submitted with the carrier's Texas Motor Carrier Application. Please do not submit a Form E with limits. This will result in the form being returned. Household goods carriers or tow truck carriers that perform non-consent tows are also required to provide proof of cargo insurance on a Form H and I. **Each insurance filing must be accompanied by a \$100 filing fee made payable to the Texas Department of Transportation. All insurance filing forms are available through your insurance company.**

Type No. and Type of Motor Carrier	Description	Minimum Insurance Requirement	
<b>1 - HAZ</b>	<b>Transporters of Hazardous Substances (regardless of weight)</b>		
	a. Hazardous substances, as defined in 49 Code of Federal Regulations (CFR) §171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles, with capacities in excess of 3,500 water gallons; or any quantity of Division 1.1, 1.2, and 1.3 materials, any quantity of Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in 49 CFR §173.403.	\$5,000,000	
	b. Oil listed in 49 CFR §172.101: hazardous waste, hazardous materials, and hazardous substances as defined in 49 CFR §171.8 and listed in 49 CFR §172.101, but not mentioned in paragraphs (a) or (b) of this subsection and petroleum products that are lubricants or fuels	\$1,000,000	
<b>2 - TOW</b>	<b>Tow Truck Carriers</b>		
	a. Gross weight, registered weight, or gross weight rating of 26,000 pounds or less	\$300,000	
	b. Gross weight, registered weight, or gross weight rating over 26,000 pounds	\$500,000	
	c. In addition to automobile liability insurance described above, tow truck carriers that perform non-consent tows must file a Form H (Uniform Motor Carrier Cargo Certificate of Insurance) accompanied by a Form I (Uniform Motor Carrier Cargo Insurance Endorsement) with the following limits	\$50,000 per vehicle	
<b>3 - BUS</b>	<b>Bus Operators</b>		
	a. Vehicles designed or used to transport more than 15 passengers (including the driver) but less than 26 passengers (not including the driver)	\$500,000	
	b. Vehicles designed or used to transport 26 passengers or more (not including the driver)	\$5,000,000	
<b>4 - BUS</b>	<b>Foreign Domiciled Bus Operators</b>		
	a. Vehicles designed or used to transport 15 passengers or less (including the driver)	\$1,500,000	
	b. Vehicles designed or used to transport 16 passengers or more (including the driver)	\$5,000,000	
<b>5 - HHG</b>	<b>Household Goods Movers</b>		
	In addition to automobile liability insurance as described in number 7 below, cargo insurance must be filed on Form H (Uniform Motor Carrier Cargo Certificate of Insurance) accompanied by a Form I (Uniform Motor Carrier Cargo Insurance Endorsement) with the following limits	Per Shipment	\$5,000
		Aggregate	\$10,000
<b>6</b>	<b>Foreign Carriers</b>		
	(Domiciled outside of the U.S.A.) transporting cargo other than cargo listed above	\$750,000	
<b>7 - OTHER</b>	<b>All Others</b>		
	Private or for-hire motor carriers with a gross weight, registered weight, or gross weight rating in excess of 26,000 pounds	\$500,000	

**Note:** Motor carriers whose primary business is transportation for compensation or hire, and who operate between two or more incorporated cities, towns, or villages, shall provide worker's compensation or accident insurance coverage for all employees. **(Not filed with TxDOT.)**

For more information, visit our web site at [www.dot.state.tx.us](http://www.dot.state.tx.us) (Select "Trucking & Vehicle Storage Facilities"). For complaints concerning the motor carrier application process, call (512) 465-3696, or write to: TxDOT-MCD, 125 E. 11<sup>th</sup> Street, Austin, Texas 78701.