OLD REPUBLIC CONTRACTORS INSURANCE GROUP

REGREVIEW℠

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Getting Ready for the HOS Changes: 30-minute Breaks

The new federal hours-of-service (HOS) rules could provide your drivers with a lot more flexibility — and your company with more productivity.

Effective September 29, 2020, the changes will impact four areas of the HOS rules in 49 CFR Part 395:

1.	The 30-minute break rule,
2.	The 100-air-mile exception,
3.	The sleeper-berth provisions, and
4.	The exception for "adverse driving conditions."

Drivers, dispatchers, and others at the motor carrier who are affected by these changes must apply the rules correctly — or face the risk of increased liability.

The first topic, in part one of a four-part series, is the 30-minute break for property-carrying drivers operating commercial motor vehicles (CMVs) in interstate commerce.

Old vs. new rule

This rule (49 CFR §395.3(a)(3)(ii)) is designed to make sure truck drivers get a break from driving if they intend to continue driving late into the day.

Current / Old Rule	**New Rule**
• A 30-minute rest break is required after eight *consecutive* hours on the clock if the driver will continue to drive a CMV. • Drivers must be off duty and/or in a sleeper berth for their breaks.	• A 30-minute break from driving is required after accumulating eight hours of *driving* time if the driver will continue to drive a CMV. • Drivers may remain on duty (not driving) for their breaks.

What are the advantages of the new rule?

Impacts of the new rule include the following:

- Anything a driver does for 30 consecutive minutes *besides driving a CMV* will count as a valid break.

- A break will be needed only by those who drive a CMV more than eight hours per workday. Fewer drivers, therefore, will need the break to remain in compliance, which will reduce violations.
- Many drivers will have the flexibility to shift their breaks to a later point in the workday (after eight driving hours rather than eight consecutive hours after starting the workday).
- Drivers will gain productivity since they need only stop driving for their break; they can continue to perform other work activities. They will be able to load/unload, fuel, do vehicle inspections or paperwork, or engage in other work activities during the 30-minute break.
- Some segments of the industry already have a special exemption allowing them to remain on duty for their breaks, such as haulers of explosives or ready-mix concrete. Those exemptions will no longer be necessary.

Cautions to consider

Even with the advantages of the new 30-minute break requirement, driving while fatigued is still prohibited, making off-duty rest breaks an essential option for many drivers. Company policies may still require drivers to log off duty for their breaks.

Parking shortages will not be an excuse to violate the rule. Drivers should not wait until they drive nearly eight hours before seeking a place to park for their break.

And, finally, be sure to consult with an HR professional for guidance on complying with state labor laws if your state mandates rest breaks.

Proposed HOS Study Would Pause 14-hour Window

The Federal Motor Carrier Safety Administration (FMCSA) is seeking public comment on a proposed pilot program that would study the effects of extending a property-carrying driver's day up to three hours.

The "Split Duty Period Pilot Program" would operate over a three-year period, recruiting up to 400 qualifying commercial driver's license (CDL) holders. Drivers would participate in the study for up to a year.

Drivers in the program would be allowed to pause their 14-hour on-duty driving period with one off-duty period between 30 minutes and three hours, provided the drivers take ten consecutive hours off-duty at the end of the day.

Before moving forward with the study, the FMCSA is required by law to gather public input on the proposal for 60 days. If the agency decides to implement the study, it must report its findings to Congress after the program concludes. This is a necessary step before the agency can proceed with any changes to the hours-of-service (HOS) regulations.

National Safety Stand-Down to Prevent Falls in Construction set for Sept. 14-18

September 14-18 marks the seventh annual National Safety Stand-Down to Prevent Falls in Construction. Fatalities caused by falls from elevation continue to be a leading cause of death for construction employees, accounting for 320 of the 1,008 construction fatalities recorded in 2018. The National Safety Stand-Down raises fall hazard awareness across the U.S. in an effort to stop fall fatalities and injuries.

The stand-down is a voluntary event for employers to talk to employees about safety. Any workplace can hold a stand-down by taking a break to focus on fall hazards and to reinforce the importance of fall prevention.

OSHA is partnering with other safety organizations to encourage employers to provide safety demonstrations on fall protection equipment, conduct talks regarding fall-related hazards, safety policies, goals, and expectations, and promote the event by using the #StandDown4Safety on social media. Resources are available on OSHA's Fall Prevention Stand-Down webpage.

Employers of companies not exposed to fall hazards can use this opportunity to have a conversation with employees about the other job hazards they face, protective methods, and the company's safety policies and goals. It can also be an opportunity for employees to talk to management about falls and other job hazards they see.

FMCSA Declares Regional Emergency due to Marco and Laura

Regulatory relief has been granted to motor carriers and drivers providing direct assistance in the aftermath created by Hurricanes Marco and Laura.

The Federal Motor Carrier Safety Administration's (FMCSA) Southern and Western Service Centers issued a Regional Emergency Declaration for Alabama, Louisiana, Mississippi, and Texas. Qualifying motor carriers and drivers are exempt from 49 CFR Parts 390 through 399, except as otherwise restricted in the Emergency Declaration.

The declaration was effective August 25, 2020, and remains in effect for the duration of the emergency or until 11:59 P.M. (ET), September 23, 2020, whichever is less.

Requirements that remain intact

The Emergency Declaration does not exempt motor carriers and drivers from complying with:

- FMCSA drug and alcohol testing requirements (49 CFR Part 382),
- Commercial driver's license requirements (49 CFR Part 383),
- Financial responsibility (insurance) requirements (49 CFR Part 387),
- Hazardous material regulations (49 CFR Parts 100-180),
- Applicable size and weight requirements, or
- Any other portion of the regulations not specifically authorized pursuant to §390.23.

Motor carriers or drivers currently subject to an out-of-service order are not eligible for the relief granted by this declaration until they have met the applicable conditions for its rescission, and the order has been rescinded by FMCSA.

What is direct assistance?

The hurricanes created emergency conditions that require the immediate transportation of supplies, goods, equipment, fuel, and persons.

Direct assistance is transportation and other relief services provided by a motor carrier or its driver(s) related to the immediate restoration of essential services or supplies. It does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed.

When direct assistance ends

Direct assistance ends when a driver or commercial motor vehicle is used in interstate commerce to transport cargo not destined for the emergency relief effort, or when the motor carrier dispatches the driver or commercial motor vehicle to another location to begin operations in commerce.

After emergency work is complete, drivers are again subject to the regulations with one exception. A driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with Parts 390-399.

When a driver is moving from emergency relief efforts to normal operations, a 10-hour break is required when the total time a driver operates while conducting emergency relief efforts, or a combination of emergency relief and normal operation, equals 14 hours.

FMCSA Publishes Notice Seeking Comments Regarding Transparency in Property Broker Transactions

The Federal Motor Carrier Safety Administration (FMCSA) is seeking comments regarding transparency in property broker transactions. Two independent organizations, the Owner-Operator Independent Drivers Association (OOIDA) and the Small Business in Transportation Coalition (SBTC) have petitioned the FMCSA to write rules providing carriers greater access to the full record of the transaction as required in the regulations.

OOIDA requested that FMCSA require property brokers to automatically provide an electronic copy of each transaction record and to explicitly prohibit brokers from including any provision in their contracts that requires a motor carrier to waive its rights to access the transaction records.

The SBTC made a similar request. In addition, the SBTC also requested that the agency adopt rules indicating that a broker's contract cannot include a stipulation that would exempt the broker from having to comply with the transparency requirement.

The FMCSA is seeking comments through October 19, 2020.

PHMSA Releases Updated Emergency Response Guidebook

The Pipeline and Hazardous Materials Safety Administration (PHMSA) released the latest edition of its Emergency Response Guidebook (ERG). The 2020 ERG is a newly revised go-to guidebook that provides first responders guidance on what to do during the critical first 30 minutes of a hazmat transportation accident. Shippers and carriers of hazardous materials also use the ERG to provide emergency response information that is required for most hazardous materials.

The ERG contains an indexed list of dangerous goods and their associated ID numbers, general hazards they pose, and recommended safety precautions. PHMSA plans to distribute more than 1.8 million copies of the guidebook to firefighters, emergency medical technicians, and law enforcement officers across the nation.

The FMLA and Pre-op Quarantine Periods

Every now and then, employers are affected by the actions of organizations or industries they would not otherwise suspect. Sure, lawmakers and employment law-enforcing agencies commonly impact employers. Health care providers can when it comes to employee leave for medical conditions or workers' compensation. Now, since health care providers have again begun to perform medical procedures and surgeries beyond caring for those struck with COVID-19, they have rightfully taken many precautions. One of those precautions is testing patients and sending them home to self-quarantine for at least 72 hours before the procedure or surgery.

This makes sense from a health care perspective. Many of those patients, however, are employees. Therefore, employers are left wondering whether the extra leave needed for that pre-op quarantine is protected.

Employers might think that such leave would fall under the Families First Coronavirus Response Act (FFCRA) because one of the qualifying reasons is when an employee is medically advised to self-quarantine. For purposes of this particular reason (known as FFCRA #2 for employment law nerds), the advice to self-quarantine must be based on the health care provider's belief that the employee has COVID-19, may have COVID-19, or is particularly vulnerable to COVID-19. The employee would also need to be unable to work from home.

If that is not the case, the employee would not be entitled to the FFCRA leave for reason #2. No other reason would apply under the FFCRA, either.

Assuming the reason for the absence (the medical procedure or surgery) qualifies for regular FMLA leave, the reason for the additional absence would likely be seen as being so intertwined for the original reason it would likely be protected by the FMLA. This is fairly logical, as the employee could not get the procedure without the pre-op quarantine.

This is similar to a situation in which an employee needs to spend a day driving to a health care facility to obtain treatment. The day spent driving is so interconnected with the treatment that it's all part of the treatment.

Remember the good old days from ten months ago, when the FMLA was the challenge regarding employee leave? Someday, in the not-too-distant future, that will be the case again.

Finally, IRS Provides Guidance on the Social Security Withholding Deferral

The Department of Treasury and Internal Revenue Service have finally issued guidance related to the President's August 8 memo allowing employers to defer withholding and payment of an employee's portion of the Social Security tax if the employee's wages are below a certain amount. The tax is not withheld, so it is also not deposited to the IRS.

That doesn't mean the IRS won't want it in the future.

The guidance makes relief available for employers and generally applies to wages paid starting September 1, 2020, through December 31, 2020. Employers don't have much time to act on the guidance. A draft revision of Form 941 has been created for this tax deferral.

The employee Social Security tax deferral may apply to payments of taxable wages to an employee that are less than $4,000 during a bi-weekly pay period, with each pay period considered separately. No deferral is available for any payment to an employee of taxable wages of $4,000 or above for a bi-weekly pay period.

The Social Security tax that was deferred would be withheld between January 1, 2021, and April 30, 2021, so employees will still need to pay the tax, and employers will need to withhold it. They would simply get the bill for the deferred tax early next year. After April 30, penalties, interest, and taxes would begin to accrue. Employers may make arrangements to otherwise collect the total applicable taxes from the employee, but these arrangements are not identified or defined. If an employee does not pay the taxes, the employer may be on the hook. In the end, employers may not want to take on this responsibility.

The bill employees get come next year is nothing to sneeze at. If, for example, an employee makes $50,000 per year, he would have to pay $1,073. Even if employers double the amount from January through April that would otherwise be withheld, the new deduction could cause some paycheck sticker shock.

Questions still remain. What if an employee leaves the company during the period of the deferral? Would an employer still need to pay the taxes the employee would have otherwise paid next year? Adjusting payroll systems could also require some consideration. Communicating all this to employees would also require some careful thought.

According to the guidance, employers are allowed to defer the withholding, so it appears they are not required to do so. The Executive Order, on the other hand, indicates that employers are required to offer the deferral to employees. Professionals dealing with employment tax seem to lean more toward it being voluntary. Employees, in turn, may choose to not have this tax withholding deferred. While some COVID-19 financial changes have forgiveness provisions, this latest one does not.

DC: Let Customers go Without Masks if Fear of Violence

Employees should not attempt to force anyone who appears violent or upset to follow COVID-19 prevention policies or practices, the Centers for Disease Control and Prevention (CDC) recommends on its website. Threats or acts of violence should be reported to a manager or supervisor, following any existing policies that may be in place, and employees should go to a safe area if needed.

The CDC's website offers strategies to limit violence towards workers that may occur when businesses put in place policies and practices to help minimize the spread of COVID-19 among employees and customers. Businesses may need to adapt these strategies based on their physical space, staffing, and other factors.

Workplace violence prevention strategies include:

- Offering customers options to minimize contact with others, such as curbside pickup;
- Advertising COVID-19 related policies on the business website;
- Posting signs that let customers know about policies for wearing masks, social distancing, etc.;
- Establishing steps to assess and respond to workplace violence;
- Assigning two workers to work as a team to encourage COVID-19 prevention policies be followed;
- Identifying a safe area for employees to go to if they feel they're in danger;
- Providing employee training on threat recognition, conflict resolution, and nonviolent response;
- Supporting employees and customers if a threatening or violent situation occurs; and
- Installing security systems, such as panic buttons, cameras, and alarms, and training employees on how to use them.

Form 941 Reminders: Q2 Filing and New Credits

Even during a pandemic, life and taxes go on. As am employer, you use the IRS Form 941 to report income taxes, social security tax, or Medicare tax withheld from employee's paychecks. You also use it to pay the employer's portion of social security or Medicare tax.

The newest version of the Form 941-X (to allow for corrections to the new lines added to the Quarter 2 Form 941) is expected in late September. In the meantime, for 2020, consider the following:

942) If adjusting Quarter 1 or earlier, you may use the existing Form 941-X.

943) If adjusting Quarter 2 (or later) and not making any increase or decrease to the employer share of social security tax or to any of the new COVID-related lines that were added to the Quarter 2 Form 941, the IRS strongly recommends not using the existing Form 941-X, but rather waiting for the new Form 941-X revision to be released.

944) If adjusting Quarter 2 (or later) and making any increase or decrease to the employer share of social security tax, or to any of the new COVID-related lines, do not use the existing Form 941-X; instead, wait for the new Form 941-X revision.

945) Please do not send a Form 941 with "Amended" (or similar notation) written on the form.

946) If you have already done either of 3-4 above, wait for correspondence to find out if the IRS was able to process the tax return or had to reject it. Given the backlog of paper forms and correspondence due to COVID-19, the IRS is unable to estimate when correspondence will go out.

Many significant changes have been made to Form 941 to allow for the reporting of new employment tax credits and other tax relief related to COVID-19.

The new credit for qualified sick and family leave wages is reported on line 11b and, if applicable, line 13c. The employee share of social security tax on qualified sick and family leave wages is reported on lines 5a(i) and 5a(ii). Qualified sick and family leave wages aren't subject to the employer share of social security tax. Qualified sick and family leave wages not included on lines 5a(i) and 5a(ii) because the wages reported on that line are limited by the social security wage base are included on line 5c. Qualified health plan expenses allocable to qualified sick and family leave wages are reported on lines 19 and 20. See the instructions for line 11b for information about the new credit for qualified sick and family leave wages.

The new employee retention credit is reported on line 11c and, if applicable, line 13d. Qualified wages (excluding qualified health plan expenses) for the employee retention credit are reported on line 21 (these amounts should also be included as wages on lines 5a and 5c, and, if applicable, line 5d). Qualified health plan expenses allocable to the qualified wages for the employee retention credit are reported on line 22. For the second quarter Form 941 only, qualified wages (excluding qualified health plan expenses) for the employee retention credit and qualified health plan expenses allocable to the qualified wages for the period from March 13, 2020, to March 31, 2020, are reported on lines 24 and 25, respectively.

You may defer the deposit and payment of the employer share of social security tax otherwise due during the calendar quarter. The amount of deferral is reported on line 13b.

If you requested an advance of the sick and family leave credit and/or the employee retention credit, you should have filed a Form 7200, Advance Payment of Employer Credits Due to COVID-19, for the quarter. The amount of all advances received from Forms 7200 filed for the quarter is reported on line 13f.

The credit for qualified sick and family leave wages (reported on lines 11b and 13c) and the employee retention credit (reported on lines 11c and 13d) are figured on Worksheet 1.

EPA Extends Temporary Enforcement Policy for Substitute Signatures on Hazardous Waste Manifests During Pandemic

EPA has extended its temporary policy on signing paper hazardous waste manifests during the COVID-19 public health emergency. On May 18, EPA issued a memorandum titled "COVID-19 Implications for Signing Paper Hazardous Waste Manifests" that outlined the agency's temporary policy regarding how handlers of hazardous waste can address generator signatures on paper manifests during the COVID-19 pandemic. The policy, known as the Manifest Signature Policy, was reinforced by EPA's March 26, 2020, Temporary Enforcement and Compliance Assurance Program, which provided partial leniency to companies making good faith efforts to meet their regulatory requirements during the pandemic. While the Temporary Enforcement and Compliance Assurance Program expires on August 31, 2020, EPA is extending the Manifest Signature Policy to November 30, 2020.

Hazardous waste handlers told EPA that they anticipate the need for continued social distancing for obtaining "wet" signatures on paper hazardous waste manifests. They believe measures are needed to protect truck drivers and facility personnel in areas with high rates of COVID-19.

The temporary Manifest Signature Policy applies only to generator signatures required on the Uniform Hazardous Waste Manifest, EPA form 8700-22/22A. EPA urges all parties to use the electronic hazardous waste manifest (e-Manifest). If this is not a viable option, then the following steps should be taken:

1.	The transporter should write the name of the generator in Box 15 and, under "Signature," should write "COVID-19 signature substitute" or abbreviated as "COVID-19 sig. sub."
2.	The generator should provide a signature substitute in a cell phone text message, email, or hard copy letter mailed to the transporter and designated facility. The generator should use one document/transmittal to cover all manifest activities per transporter/designated facility throughout the duration of this temporary policy.
3.	The transporter of designated facility should write in Box 14 of the manifest "documentation for generator signature substitute available upon request."

Generators and transporters taking these steps should maintain all documentation for three years from the last shipment needing a signature substitute.

New Federal Drug Testing Form Approved by OMB

The Office of Management and Budget (OMB) recently approved changes to the Federal Drug Testing Custody and Control Form (CCF), which is used to document drug testing performed under 49 CFR Part 40.

Part 40 procedures are required of tests performed by agencies within the U.S. Department of Transportation (DOT), including the Federal Motor Carrier Safety Administration (FMCSA). The form, a Health and Human Services document, is referenced in §40.45 as the sole means of recording DOT drug collections.

Employers and service providers have been given a year to prepare for the change. The prior version of the form may be used through August 30, 2021.

Notable changes to the CCF include:

- Additional spaces to allow collectors to record a driver's CDL number and state. FMCSA testing rules require the entry of the driver's license as the employee ID number in Step1 of the CCF. The CDL information is needed to report results to the CDL Drug and Alcohol Clearinghouse.
- New fields to allow for saliva testing in addition to urine. **Note:** Saliva-based drug testing is not allowed for DOT testing until the department updates its testing procedures in Part 40.
- Removal of the instructions from the back of the form. The instructions will be made available on a government website instead.

Oregon OSHA Proposes Temporary COVID-19 Rule

Oregon OSHA has proposed a temporary rule that would require all workplaces to implement risk-reducing measures to combat the spread of coronavirus. The rule could take effect no later than September 14 and remain in effect for 180 days.

The rule contains provisions that would apply to all workplaces, such as social distancing, barriers, face coverings, cleanings, and information sharing. It includes further requirements for jobs requiring an employee to be within six feet of another person for 15 minutes or longer if it involves direct contact (e.g., tattooing, massage, and hairdressing). In these situations, employers would need to conduct a COVID-19 exposure risk assessment.

Employers engaged in health care activities such as direct patient care, aerosol-generating procedures, and emergency first-responder work would be required to develop and implement an infection control plan in addition to implementing risk-reducing measures.

Oregon OSHA is accepting public comments on the rule through August 31.

Cal/OSHA Issues Updated Respirator Guidance for Healthcare Employers

Cal/OSHA recently issued updated guidance for healthcare employers facing shortages of respirators during the coronavirus pandemic. It replaces guidance issued on June 12 and is subject to change as circumstances evolve.

The guidance recommends engineering controls and work practices to help minimize the need for respiratory protection and provides strategies for extended respirator use and optimizing supplies.

Engineering and work practice controls include:

- Minimizing the number of employees exposed to suspected and confirmed COVID-19 patients by using barrier enclosures that cover a patient's head and upper body;
- Masking suspected and confirmed COVID-19 patients whenever employees are not using a respirator;
- Training employees on additional precautions and changes to the Aerosol Transmissible Diseases (ATD) Plan when respirators cannot be obtained, or when there are changes to procedures such as respirator reuse or extended use; and
- Informing employees and their representatives that the changes are only in effect until respirator supplies can be restored, and keeping them updated on status changes.

Strategies for extending respiratory supplies include:

- Using reusable NIOSH-certified respirators instead of disposable filtering facepiece respirators,
- Using NIOSH-certified industrial filtering facepiece respirators,
- Allowing employees to wear their own respirator if it complies with Cal/OSHA requirements,
- Using fit testing methods that maximize respirator supplies and fit testing efficiency,
- Usng certain expired NIOSH-certified filtering facepiece respirators, and
- Storing disinfected filtering facepiece respirators in case of future shortage.

Study Finds Service Industry Workers Have Elevated Risk of Hearing Loss

New research from the National Institute for Occupational Safety and Health (NIOSH) estimates that a large number of noise-exposed workers within the service industry have an elevated risk of hearing loss, including some in professions traditionally viewed as low risk. Data show that overall, 16% of workers across all industries experienced occupational-related hearing loss, compared with 17% in the service sector. Audiograms for 1.9 million noise-exposed workers from 2006 to 2015 were studied, including audiograms for nearly 160,000 service industry workers.

The study found several sub-sectors of the service industry exceeded the overall occurrence of hearing loss by large percentages, and many had high risks for hearing loss. For example, workers in Administration of Urban Planning and Community and Rural Development had the highest occurrences of hearing loss at 50%, and workers in Solid Waste Combustors and Incinerators had more than double the risk, the highest of any sub-sector.

The study also showed that some sub-sectors traditionally viewed as low risks, such as professional and technical services and schools, had higher than expected occurrences of hearing loss. For example, Custom Computer Programming Services had occurrences of 35%, and Elementary and Secondary Schools, 26%.

Employers in the service industry may consider monitoring noise levels in the workplace to ensure their employees are not exposed to 85 decibels or more over an 8-hour period. For general, occupational hearing loss prevention, NIOSH recommends employers remove noise at its source or reduce it to a safe level. When noise cannot be reduced to safe levels, employers should implement a hearing conservation program.