

TRANSPORTATION Manager's DISPATCH

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How a new government rule could jeopardize fleet safety

Biden administration calls for automatic braking to be standard

Get ready: You might soon be forced to buy commercial motor vehicles with unsafe brake systems.

That's because the feds recently announced that they'll be implementing regulations to require controversial automatic emergency braking systems on newly built heavy trucks.

The National Highway Traffic Safety Administration (NHTSA) had proposed a similar regulation on automatic emergency braking in 2015, but it went nowhere under the Trump administration, which relied on manufacturers'

voluntary safety plans.

But the Department of Transportation under President Joe Biden is dramatically changing course, to the chagrin of the Owner-Operator Independent Drivers Association, which says emergency automatic braking technology isn't ready for widespread use.

Bad weather difficulties

The association claims that the braking systems can unexpectedly engage for no reason, causing potentially serious safety problems. It also says that its members have reported difficulties with the

systems in bad weather.

The association says policymakers shouldn't set a timetable for requiring automatic braking technology that's still being perfected.

The feds haven't revealed a timeline for this new regulation, but we'll keep you posted.

Your best bet: Don't overreact. This announcement could simply be a trial balloon to see how the industry responds. But begin to prepare for the possibility that this could happen, which will also likely mean a future increase in the cost of commercial trucks.

Incident investigation

Would an effective training program have helped vehicle operator avoid fatal collision?

Summary

A poorly trained commercial vehicle operator failed to respond properly when a passenger vehicle didn't yield and struck his truck on its passenger side while attempting to merge onto an interstate highway.

The damage

A passenger vehicle merging onto the interstate

failed to yield and struck a dump truck that was delivering a load of gravel.

The collision caused the truck driver to lose control of the vehicle, sending it into another passenger car and ultimately rolling onto the median, where it spilled its load of gravel onto both the eastbound and westbound lanes.

Emergency personnel

pulled the driver, a 67-year-old father of three, from the wreckage.

He died that day.

Findings

The driver's employer, a small, interstate commercial carrier, admitted to investigators that it had no formalized driver-training program.

Typically, new drivers for

the company were given verbal instructions and maybe a ride-along with an experienced driver.

Investigators concluded that had the truck driver been properly trained – particularly in defensive driving techniques – he probably could have performed an evasive maneuver and avoided the collision.



Traffic deaths reached a 13-year high even while COVID kept roads clear

Tell your drivers to be on their toes: U.S. traffic deaths rose 7% last year, the biggest increase in 13 years – even though Americans overall drove fewer miles in 2020 due to the pandemic.

The federal National Highway Traffic Safety Administration (NHTSA), which released the data, attributed the increase to drivers taking more risks on less-congested roads.

In fact, the agency said it has data showing that speeding increased on American roadways during the pandemic.

The NHTSA said more than 38,600 people died in

traffic crashes last year, the most since 2007.

Study: U.S. interstate congestion is a major cause for freight delays

Your eyes aren't deceiving you: Trucking delays have become severe in the U.S. A new study has found that freight shipments experienced the equivalent of 75,000 years of delays in 2019, with more than one-third of that lost time occurring on congested interstates.

The American Road & Transportation Builders Association, which conducted the study, calculates that interstate congestion has jumped 25% in recent years, with congestion-related costs

rising from \$12 billion in 2017 to more than \$15 billion in 2019.

The study found the cities hardest hit by freight bottlenecks include

- New York
- Chicago
- Los Angeles
- Austin
- Houston
- Nashville
- San Francisco
- Seattle
- Philadelphia
- Atlanta

Educate your drivers about the dangers of using CBD products

Warn your drivers about using cannabidiol (CBD) products.

The Federal Motor Carrier Safety

Administration (FMCSA) recently noted that these products, which are often contained in creams and oils intended for pain relief, may be absorbed into drivers' bloodstreams and cause them to test positive for marijuana.

The FMCSA said many CBD products contain higher levels of the chemical that causes users to feel high, tetrahydrocannabinol (THC), than is indicated on their labels. The agency also noted that CBD use isn't considered a legitimate medical explanation for a positive marijuana test.

Note: As of May 1, 2021, marijuana has been detected in more than half of all positive drug tests reported to the FMCSA.

You make the call

Independent operators want to be classified as real employees

"Did you hear that a bunch of our drivers are suing us?" asked Regina, the operations manager.

"They are? What for?" asked Adam, the transportation manager.

"They claim that they're employees, not independent contractors," Regina said. "They say we owe them rest and meal breaks, things like that."

"I don't understand," Adam said. "We hire independent drivers to transport loads for us. When they signed on with us, they all acknowledged that they

are independent owner-operators, not employees. I mean, they own their own trucks. How could they possibly claim they're employees?"

Their own trucks

"Well, they make some good arguments," Regina said. "All of them bought their trucks from a company owned by one of our subsidiaries. And they're paying off those trucks through weekly deductions from their paychecks."

"So?" Adam replied. "They make more than

our staff drivers. We compensate them for driving distance, for fuel and for expenses. Plus they can reject the loads we offer them, and they can take work from other trucking companies. I don't understand how they can claim to be full-fledged employees."

"Well, they're truckers, and we're in the trucking business," Regina said.

"We have to fight this," Adam said.

Did the company win?

■ *Make your call, then please turn to page 4 for the court's ruling.*

TRANSPORTATION Manager's DISPATCH

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trends to watch

■ **FATIGUE** New system makes it easier to find parking

Good news for operations like yours that care about safety: Your drivers will have more places to rest.

The Pennsylvania Turnpike Commission recently installed a new commercial truck parking management system at 10 service areas.

The system was developed to address a state and nationwide shortage of commercial vehicle parking.

It'll provide nearly real-time trucking parking availability data to truck drivers through digital messages displayed on signs along

the turnpike as well as through travel apps.

■ **INFRASTRUCTURE** Major bridge won't reopen until late July

Plan for more delays as the closed Interstate 40 bridge between Arkansas and Tennessee won't reopen until at least late July.

About 41,000 vehicles crossed the bridge through Memphis every day before it was closed on May 11 for repairs after a routine inspection found a major crack in a steel support beam.

Since the bridge's closure, traffic has been detoured to the Interstate 55 bridge.

Delays caused by the I-

40 bridge closure reportedly cost the trucking industry about \$2.4 million a day.

■ **ENFORCEMENT** California explores the use of speed cameras

Heads up: Your drivers operating in California may soon be getting tickets generated by automated cameras.

California currently bans the use of speed cameras, but a new bill in the state legislature would direct the state government to develop guidelines for local jurisdictions to set up pilot programs.

Under the bill, fines would be capped at \$125 per violation.

Investigation update

Wrong forecast led staff to try to ride out storm

Employer: Transocean Deepwater Asgard, under contract for Beacon Offshore Energy, LLC.

Incident location: Gulf of Mexico.

Agency: Bureau of Safety and Environmental Enforcement (BSEE).

What happened: The Asgard, which was forced off of its drilling location by harsh weather conditions caused by Hurricane Zeta in October 2020, sustained significant damage to its riser and lower marine riser package.

Findings: BSEE investigators concluded that an inaccurate weather forecast caused Asgard personnel to mistakenly stay latched to the well in a misguided attempt to ride out the hurricane.

Company shouldn't have fired concerned drivers

Employer: Gulfeagle Supply.

Incident location: Oklahoma City, OK.

Agency: Occupational Safety and Health Administration (OSHA).

What happened: Two vehicle drivers reported to a Gulfeagle manager that the tires on a company truck were unsafe. The drivers refused to operate the vehicle with these unsafe tires. Gulfeagle, in response, terminated them.

Findings: OSHA investigators found that Gulfeagle violated federal law by firing the drivers and ordered the company to reinstate both of them, as well as pay them each \$23,000 in back wages and \$70,000 in punitive damages. OSHA also ordered the company to train its management team on employee rights guaranteed under the federal Surface Transportation Assistance Act.



legal developments

Injured welder claims he's a seaman, sues his employer

Manager's insight:

Contract workers with temporary or transitory connections to seafaring vessels don't typically qualify as seamen under the federal Jones Act, which allows bona fide seamen to sue their employers for personal injury damages if they're hurt on the job.

What happened: A shore-based welder working aboard a jacked-up drilling rig suffered a severe injury.

Legal challenge: The welder sued his employer under the Jones Act, seeking personal injury

damages.

The employer argued that the welder wasn't a seaman, and thus he wasn't eligible to sue under the Jones Act because he was a contract worker assigned to the drilling rig for a short period of time.

However, the welder pointed to a legal precedent that allows land-based workers to sometimes be classified as seamen if they worked on a vessel that was docked or anchored at a pier.

Result: The employer won.

The judge determined that the welder didn't

qualify as a seaman under the law because much of his work aboard the rig didn't actually take him out to sea and because he didn't continue to sail with the vessel once he finished his welding assignment.

The skinny: This ruling will make it less likely that contract workers or craftsmen with temporary or limited-scope assignments on seafaring vessels who get hurt on the job will be able to successfully pursue lawsuits for personal injury damages under the Jones Act.

Citation: *Sanchez v. Smart Fabricators of Texas, LLC*, U.S. Court of Appeals 5, No. 19-20506, 5/11/21.



safety & security

Post signs to warn of equipment hazards

You might want to post warning signs advising crew members to keep their hands out of equipment while it's still rotating.

That's one suggestion included in a recent safety alert from the Bureau of Safety and Environmental Enforcement (BSEE) about an incident that caused a worker to suffer two broken fingers.

It's one of many alerts included in the BSEE!Safe text message alert system. The agency recently announced the alert system had amassed 7,000 subscribers.

Launched in May 2019, the BSEE!Safe system has

directed subscribers to 61 safety alerts and bulletins that offer lessons from incidents and near misses and recommendations for preventing future mishaps.

Congress looks to require speed limiters

Don't be surprised if your commercial motor vehicles are required to have speed limiters.

U.S. Reps. Lucy McBath, D-Georgia, and John Katko, R-New York, recently introduced legislation directing the National Highway Traffic Safety Administration to require commercial motor vehicles to be equipped with speed-limiting technology.

The proposal calls for

the speed limiters to be set at a maximum speed of 65 miles per hour, or 70 miles per hour on vehicles with adaptive cruise control systems.

Daimler recalls more than 80,000 trucks

Now might be a good time to check whether you have any Daimler trucks affected by a new recall of 80,000 vehicles due to headlight and tie-rod issues.

The recall affects model years 2017-2022 Freightliner Cascadia trucks equipped with halogen headlights, as well as a variety of Daimler models that have loose tie-rod clamps, which could cause a loss of steering.

You Make The Call: The Decision

(See case on page 2.)

No. The company lost.

An appeals court ruled that the company couldn't meet the legal burden to establish that the truck drivers were, in fact, independent contractors.

The judge held that a trucking company can't function without truck drivers because they perform an essential function for a trucking company – and that, logically, makes them company employees, not independent contractors.

What it means: Signed forms aren't ironclad

The company in this case thought it was in the clear because, upon their hiring, the drivers had all signed forms explicitly stating that they understood they were independent contractors and not employees.

Courts in these kind of cases, however, don't care about such forms. Instead they apply a three-part "ABC test" to determine whether a worker qualifies as an independent contractor. The employer in this case failed the second part of the test – truck drivers perform essential duties for trucking companies.

This was a California case, making it legally binding only in the Golden State, but it provides a good warning to employers everywhere to think through their relationships with their independent contractors to determine whether their functions are, in fact, essential to their business operations.

Based on Parada v. East Coast Transportation, Inc.



federal regulatory notices

FREIGHT TRAINS

Feds ask for staffing data from railroads

Be prepared for the federal government to start scrutinizing railroad staffing levels.

Surface Transportation Board Chairman Martin Oberman recently asked all Class I railroads to tell the federal government how prepared they are to meet service demands during the nation's economic recovery from the pandemic.

In a letter sent to Class I chief executives, Oberman wrote that he was concerned that recent rail service problems might be connected to cutbacks in rail staffing. Oberman asked the

executives to update him on their staffing levels and equipment availability.

COMPLIANCE

Feds call for review of driver drug testing data

A recent report by the Government Accountability Office (GAO) could lead to improvements in driver drug-testing data.

The GAO recommended that the Department of Transportation publicly disclose the known limitations in its truck driver drug-testing data.

The report noted the steps to verify the data vary across agencies and that no one has determined if the steps are actually sufficient.

REG ROUNDUP

New administrator; pilot records database

- President Joe Biden has appointed Meera Joshi, former CEO of the New York City Taxi and Limousine Commission, as the new administrator of the Federal Motor Carrier Safety Administration.
- The Federal Aviation Administration is establishing a database that'll allow employers to share pilot records. Employers will be required to report each pilot's employment history, training and qualifications in the pilot records database.