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FMCSA COERCION OVERVIEW- TRANSPORTATION INTERMEDIARIES AND SHIPPERS¹

1. What conduct is prohibited under the coercion rule?

The rule prohibits coercing a driver to operate a commercial motor vehicle (“CMV”) where the driver has objected that such operation would require the driver to violate regulations of the FMCSA (which regulations include, among others, the hours of service regulations and regulations governing equipment standards). To constitute a violation, there must be a threat of or actual: (1) withholding of business; (2) withholding employment or work opportunities; or (3) taking or permitting any adverse employment action against the driver.

2. Must the driver object in order to claim coercion?

Yes. A claim of coercion requires that the driver voice his or her objection and must at least generally point to the regulation that would be violated.

3. How do you respond to driver objections?

Adopt a policy of training personnel to identify and document driver objections. Once an objection has been raised, ideally, the intermediary or shipper will move to the next available option for transporting the load. If that is not feasible (that is, if there is no viable alternative), exercise discretion to determine whether the concern can be addressed in a way that avoids a violation. Regardless, in all instances where an objection has been raised, the objection and response should be documented in the load file.

4. What constitutes a threat to withhold business, employment or work opportunities or a threat to take or permit any adverse employment action?

It would be more difficult for a driver to allege coercive conduct against an intermediary or shipper than it would be for the driver to make such allegations against the motor carrier, assuming that the intermediary or shipper is not paying the driver directly. In the final rule, the FMCSA addressed a hypothetical where a shipper (though an intermediary could be substituted) hires a carrier, but when the driver arrives, he informs the shipper that he will run out of hours making it impossible to meet the delivery schedule. The shipper responds that it will never use the carrier again. According to the FMCSA, the shipper’s response is not coercion and is perfectly acceptable.

Based on the foregoing, the intermediary or shipper would need to make some threat directly against the driver (or perhaps instruct the carrier to make a threat directly against the driver), such threats, which should never be made in light of the new rule, would include:

- refusal to work with the driver in the future; or
- threatening to make a negative report about the driver to the driver’s carrier.

¹ This one-page overview of the coercion rule is by no means a complete treatment of the subject and is not intended, and should not be relied upon as, legal advice with respect to any specific set of facts or circumstances.