

The When, Where, and Why of Personal Conveyance

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We are all familiar with the changing climate in trucking. The industry is under attack by Plaintiffs' attorneys attempting to elevate what was once treated as simple auto accidents into high-dollar lawsuits. Gone are the days when a collision involving a commercial motor vehicle (CMV) became a case of negligence against the driver. Now, Plaintiffs' attorneys are finding larger verdicts and settlements by aiming the case not toward the driver alone but also against the motor carrier. This tactic is often accomplished by painting a picture of a negligent company that forgoes safety for the sake of profit. While there are many tactics used, commonly, these attorneys look for violations of the limits imposed on a driver's hours-of-service. If ignored or undiscovered by the motor carrier, these violations are used as evidence of negligence against the company.

For many years, CMV drivers used paper logs to track hours-of-service. Inaccurate recording of hours-of-service in paper logs or log fraud was common. On December 15, 2015, the Federal Motor Carrier Safety Administration (FMCSA) made electronic logging devices (ELDs) mandatory for non-exempt commercial drivers. As stated by the FMCSA, one main goal was to "improve roadway safety by employing technology to strengthen commercial truck and bus drivers' compliance with hour-of-service regulations that prevent fatigue."¹ In other words, the FMCSA believed that electronic tracking of a driver's hours-of-service would be more accurate and, therefore, safer. And based on data collected by the FMCSA, the requirement of ELDs did reduce the number of hours-of-service violations. In November 2017, before implementing the ELD mandate, up to 1.16 percent of driver inspections had at least one hour-of-service violation. In January 2018, the HOS violation ratio dropped from 1.16 percent to 0.83 percent. In May 2018, after full enforcement of the ELD mandate, it dropped even further to just 0.64 percent.²

But this data may be partially misleading. J.J. Keller & Associates, Inc. gathered information from its customers' use of ELDs from January to June 2019. Their research revealed an interesting trend. Fourteen (14) percent of drivers used personal conveyance in January of that year. By the end of June, that number increased to twenty-one (21) percent.³

This trend came on the heels of the FMCSA's clarification of its rules regarding the use of personal conveyance, published on May 31, 2018, that added more flexibility for drivers. Clearly, commercial drivers were figuring out how to use personal conveyance to their benefit, allowing them to avoid hours-of-service violations while off-duty. The negative implication of this trend is the possible misuse of personal conveyance by CMV drivers, intentionally or otherwise. Such misuse could mean fines and out-of-service time for the drivers, fines and lowered safety ratings for the carriers, and the potential for evidence of damaging safety violations to be used by Plaintiffs' attorneys (i.e., log fraud). Drivers and motor carriers must first understand personal conveyance to avoid these consequences.

What is Personal Conveyance?

The FMCSA defines "personal conveyance" as the "movement of a commercial motor vehicle for personal use *when the driver is off duty*."⁴ A driver may record time operating a CMV for personal conveyance only when the driver is relieved from work and all responsibility for performing work by the motor carrier.⁵

The FMCSA does not require motor carriers to authorize personal conveyance in its vehicles. Nor does it require that motor carriers have a written policy concerning personal conveyance. Instead, the FMCSA has elected to allow each motor carrier to determine its own policy regarding personal conveyance. In fact, the FMCSA has not even established maximum amounts of distance or time during which personal conveyance can be registered. Safety officials employ a reasonableness standard to determine whether the use of personal conveyance by a driver was reasonable, evaluating data from ELDs, mapping

software, driver interviews, and other documents. This subjective standard can be somewhat controlled by implementing distance or time limitations by the motor carriers themselves, as long as their policies comply with FMCSA regulations.

When is Personal Conveyance Allowed?

The following are examples of appropriate uses of a CMV while off-duty for personal conveyance include, but are not limited to:⁶

1. Time spent traveling from a driver's lodging (such as a motel or truck stop) to restaurants and entertainment facilities.
2. Commuting between the driver's terminal and his or her residence, between trailer-drop lots and the driver's residence, and between work sites and his or her residence. In these scenarios, the commuting distance combined with the release from work and start to work times must allow the driver enough time to obtain the required restorative rest to ensure the driver is not fatigued.
3. Time spent traveling to a nearby, reasonable, safe location to obtain required rest after loading or unloading. The time driving under personal conveyance must allow the driver adequate time to obtain the required rest in accordance with minimum off-duty periods under 49 CFR 395.3(a)(1) (property-carrying vehicles) or 395.5(a) (passenger-carrying vehicles) before returning to on-duty driving, and the resting location must be the first such location reasonably available.
4. Moving a CMV at the request of a safety official during the driver's off-duty time.
5. Time spent traveling in a motorcoach without passengers to lodging (such as motel or truck stop), or to restaurants and entertainment facilities and back to the lodging. In this scenario, the driver of the motorcoach can claim personal conveyance provided the driver is off duty. Notably, other off-duty drivers may be on board the vehicle as they are not considered passengers.
6. Time spent transporting personal property while off-duty.
7. Authorized use of a CMV to travel home after working at an offsite location.

It is important to note that the guidelines issued by the FMCSA do not require drivers to return to their last on-duty location following the use of personal conveyance. Also, if a driver is operating under personal conveyance and is stopped and inspected, he or she must change their status to "on-duty, not driving" during the inspection. Once complete, they can again operate under personal conveyance.

When Is Personal Conveyance Not Allowed?

In general, any use of a CMV that benefits the business for which it is being operated should not be considered personal conveyance. The following are examples of when the use of a CMV **would not qualify** as personal conveyance include:⁷

1. The movement of a CMV in order to enhance the operational readiness of a motor carrier. For example, bypassing available resting locations in order to get closer to the next loading or unloading point or other scheduled motor carrier destination.
2. After delivering a towed unit and the towing unit no longer meets the definition of a CMV, the driver returns to the point of origin, under the direction of the motor carrier, to pick up another unit to be towed.

3. Continuation of a CMV trip in interstate commerce in order to fulfill a business purpose, including bobtailing or operating with an empty trailer in order to retrieve another load or repositioning a CMV (tractor or trailer) at the direction of the motor carrier.
4. Driving a passenger carrying CMV while passenger(s) are on board. Off-duty drivers are not considered passengers when traveling to a common destination of their own choice within the scope of this guidance.
5. Transporting a CMV to a facility to have vehicle maintenance performed.
6. Driving to a location to obtain required rest after being placed out of service for exceeding the maximum periods permitted under part 395, unless so directed by an enforcement officer at the scene.
7. Traveling to a motor carrier's terminal after loading or unloading from a shipper or a receiver.
8. Operating a motorcoach when luggage is stowed, the passengers have disembarked, and the driver has been directed to deliver the luggage.

As stated above, even when the reason for personal conveyance is allowed and justified, the method by which it is used must still be reasonable. For example, it would not be considered reasonable for a driver to travel 100 miles towards his or her final destination to find lodging while passing other appropriate locations.

What Are Motor Carriers To Do?

Motor carriers must be proactive when it comes to personal conveyance. If a motor carrier has decided to allow personal conveyance, it must develop a firm policy for its use. The policy should restrict the use of personal conveyance to times when drivers are off duty. Personal conveyance should only be allowed for the personal needs of the drivers. It must be made clear to drivers that no personal conveyance should ever benefit the motor carrier unless the conveyance is made at the direction or order of a shipper, receiver, or safety official, and the driver is already out of hours, the movement is limited to the nearest safe location, and the driver on the ELD immediately documents the incident. Motor carriers should also consider limiting the amount of time or distance a driver can operate under personal conveyance each day and/or per use of personal conveyance.

But the creation of a policy is not enough. Enforcement of the proper use of personal conveyance is critical. A motor carrier should audit its drivers' use of personal conveyance. Any violations of the company's policies must be addressed with the driver and cannot be ignored. Companies should create a paper trail of education, enforcement, discipline, and reeducation. Failure to take these steps while allowing personal conveyance can potentially inject issues into a case that can create the threat of a nuclear verdict.

¹*Electronic Logging Devices to be Required Across Commercial Truck and Bus Industries*. U.S. Department of Transportation, 10 Dec. 2015.

²*Electronic Logging Devices: Improving Safety Through Technology*. U.S. Department of Transportation Federal Motor Carrier Safety Administration.

³Bray, Tom. "Use of 'Personal Conveyance' and 'Yard Move' Increasing Significantly." *JJKeller*, 2 Dec. 2019, www.jjkellerlibrary.com/news-article/use-of-personal-conveyance-and-yard-move-increasing-significantly.

⁴FMCSA (2018). *Regulatory Guidance: Personal Conveyance*. www.fmcsa.dot.gov/hours-service/elds/regulatory-guidance-personal-conveyance-0.

⁵FMCSA (2019). *Personal Conveyance*. <https://www.fmcsa.dot.gov/regulations/hours-service/personal-conveyance>.

⁶"Regulatory Guidance Concerning the Use of a Commercial Motor Vehicle for Personal Conveyance." *FMCSA*, Federal Motor Carrier Safety Administration, 31 May 2018, www.fmcsa.dot.gov/regulations/regulatory-guidance-concerning-use-commercial-motor.

⁷"Regulatory Guidance Concerning the Use of a Commercial Motor Vehicle for Personal Conveyance." *FMCSA*, Federal Motor Carrier Safety Administration, 31 May 2018, www.fmcsa.dot.gov/regulations/regulatory-guidance-concerning-use-commercial-motor.