

THE COST OF MONITORING DRIVERS:

I have been asked countless times by fleet owners and safety personnel just how many drivers should they monitor for Hours of Service (HOS) compliance each month. What is the acceptable level? What are other fleets doing? Should there be some type of selection criteria for drivers? Can they audit 25% of their fleet and still be compliant? How much of their fleet do they have to monitor? Does the law state that a carrier has to monitor 100% of its fleet?

My response has always been the same: "You should be monitoring 100% of your fleet, every month in order to ensure compliance".

As of January 2007 when Regulation 555/06 came into effect, I've added that "Section 28 states that an operator shall monitor each driver's compliance with the regulations and shall keep records of any non-compliance and/ remedial action taken by the operator in response to it. A monthly log audit report for each driver is proof of monitoring and of remedial action."

The usual response that I received from fleet owners is one of disbelief. "Are you crazy? Do you know how much it would cost for me to audit every log? Do you know how much time that would take? I'd have to hire more staff just to audit logs. I can't afford to do that!"

At that point I would state that 100% auditing of the fleet is really the only way to help protect your company in terms of an audit or a lawsuit wherein a 3rd party was fatally injured or suffered personal injuries while involved in a collision with one of your vehicles. The potential long term costs for either of those events could far outweigh driver monitoring costs.

I would then launch into a quick explanation that the defence of Due Diligence is only available to those operators/carriers that can provide proof that they took all reasonable steps to prevent the action or incident from happening. The carrier must prove that it took reasonable care by meeting all statutory obligations and trying to adhere to industry best practice standards.

In addition, the carrier would have to prove that it is continually assessing the performance of its fleet and should be able to provide

proof of analyzing potential problems in meeting those statutory/best practice responsibilities. The company should have documentation to verify the creation, implementation, and enforcement of policies and procedures designed to address those obligations.

Regular log auditing provides a carrier with the opportunity to address driver's log problems in a timely fashion. A monthly log audit report provides remedial training in those areas that drivers are having difficulties. By taking a proactive approach of giving drivers on-going instruction through log auditing, a company should see a decrease in hours of service issues during roadside inspections. In an audit situation, regularly audited drivers are much more likely to have fewer problems and would therefore increase the likelihood of passing the driver portion of an audit.

I would then sum up my explanation by stating that in my experience, carriers that have a fleet wide log auditing program in place have the ability to identify fleet wide problems, look for trends, and implement policies and procedures that will address a large majority of HOS problems within its own fleet. In my experience while attending Ministry audits/special investigations, the number of "did permit charges" to the company were greatly reduced if the company could provide proof that it had already identified and retrained the driver for the problems that were found during the Ministry audit.

Normally after that lengthy and rather technical explanation, most fleet owners decided that the potential monetary costs associated with the risk of "not" monitoring the entire fleet far outweighed the cost of monitoring the fleet for HOS compliance.

The regulations, as written, seemed to me to be very straightforward in terms of the duty placed upon the operator to audit each driver for compliance with HOS. I was comfortable in my belief that should fleet owners choose not to satisfy requirements under Section 28, then the operator would be subject to charges for allowing the driver to enter inaccurate or false information on the log.

Imagine my surprise then I was contacted by a carrier who advised that that 100% auditing was not necessary and that the Ministry would recognize an auditing program that audits approximately 15% of the entire fleet each month.

What? How can that be? Auditing 15% of your fleet is acceptable to the Ministry? When did this happen? I certainly didn't know about this, and apparently neither did the auditors who conducted the recent enforcement audits and/or special investigations which I've attended.

In one instance, there were numerous did permit charges to the carrier who currently audits 100% of their fleet for hours of service and false logs. The company was charged for allowing a driver to enter false information on his log based on expense receipts referred on the drivers trip envelope. Time markers found on truck wash receipts, parts purchased and IdleAire invoices were compared to log entries. At that time, the only time markers being verified were border crossing receipts and fuel purchases.

As I have never been accused of being shy, I contacted an individual at the Ministry of Transportation who is well known for his knowledge of the Hours of Service regulations. I wanted to get some clarification in terms of what exactly would be considered a reasonable monitoring program.

I was informed that a carrier should take all reasonable measures to monitor that the drivers are complying with the regulations. It was suggested that a reasonable monitoring program should be:

1. Inclusive in that all drivers and vehicles have opportunity to be selected; and
2. Systematic in such a way that a specific activity takes place at a designated interval; and
3. Optimal in that the operator utilizes the best available data including all supporting documents; and
4. Progressive in that the program uses a "risk based" criteria to support improvement.

When asked if 15% monitoring of the fleet would be considered to be a reasonable monitoring program, I was advised that the Ministry intentionally did not attempt to include what an effective monitoring program would be, rather, it is up to the carrier to demonstrate that the company took reasonable precautions to ensure an offence was not committed.

If charges are laid against the carrier for allowing drivers to enter false information, the Ministry takes the position that "what is reasonable is a decision for a court to decide" in terms of the scope and detail of the driver monitoring program.

It seems that the Ministry will provide some direction in terms of what a monitoring program should entail, but won't commit to anything further than that. The Ministry is comfortable with laying charges, and then having the Courts decide what is reasonable to expect for an operator to have in place in terms of a driver monitoring system.

Carriers should be aware of the potential pitfalls they will face if they decide to audit the logs of only a portion of their fleet on a monthly basis.

Say for instance that there was serious collision in the United States involving one of the carrier's trucks and a small passenger vehicle. The driver of the passenger vehicle suffered serious personal injuries. If it was alleged that the driver had fallen asleep or was over his/her daily hours at the time of the accident the carrier will need to be able to prove that they are a responsible carrier by ensuring that their drivers are complying with current Hours of Service regulations.

If that carrier only audits 30% of their fleet it would have absolutely no defence if the driver in question was part of the 70% of the fleet that had not been audited that month. It would be even more harmful if it was determined that the driver in question had not been part of the audit pool for the previous 2 to 3 months.

A good personal injury lawyer would try to make a case of negligence against the carrier for allowing 70% of its fleet to operate without monitoring for compliance with Hours of Service regulations each and every month.

If a large personal injury claim is paid out there is a strong possibility that the carriers insurance premium will increase next renewal period.

In addition to potential costly civil litigation ramifications, the choice to only audit a small percentage of the fleet could have serious implications for the carrier during a MTO or DOT audit. Given the fact that regular log auditing is not taking place for all drivers, it would be difficult for the carrier to be able to provide proof of monitoring for drivers selected in a Ministry or DOT audit.

The entire concept behind an audit is simply to see if operators are monitoring their drivers and looking at their paperwork and logs. Generally speaking, if an auditor finds a problem with a driver's logs, they have the ability to lay two charges. One charge will be against the driver for exceeding his hours or falsifying his log and the 2nd charge would be to the operator for allowing it to happen.

In reality, there is little that a carrier can do about the first 'driver' charge other than to bring the problem to the drivers' attention and retrain him so he does not continue to make the same mistake.

In order to prevent the did permit charges against the company, Ministry auditors will need to see some type of report or letter generated by the operator that outlines all hours of service violations and falsifications for the problem driver for that month. The report/letter clearly indicates that the carrier has brought these problems to the attention of the driver and as such, is not allowing the driver to falsify his log books.

An audit can prove to be costly in a number of ways in that it will increase the carrier's overall violation rate if charges are laid, and in many cases, will negatively affect the carriers Safety rating. High violation rates and poor safety ratings can mean further Ministry interventions, increased road side inspections, and higher insurance premiums.

Establishing a fleet wide monitoring program is a cost-effective way to improve driver performance and decrease potential company liability in the face of a MTO/DOT audit or serious 3rd party injury lawsuits. Although many carriers will tell me that they can't afford to audit 100% of their fleet, I sometimes wonder if they really understand what that decision could cost them?