



2024 Transportation Practice Group Seminar

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Exploring Legal Considerations of Certain Information Contained within Employee Files and Handbooks

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Background

Employee handbooks and driver qualification lists have long been utilized by the plaintiff's bar to prove liability against both the driver and the company. Whether these materials exist or not, they can become a potential source of liability against your client. For example, if a driver fails to adhere to a specific policy appearing in an employee handbook or a driver qualification list, the plaintiff's bar will demonstrate how this failure resulted in an accident. In a similar way, a company will be attacked by the plaintiff's bar when an accident results in the absence of certain safety policies. Under either scenario, it is incumbent upon the defense to anticipate these tactics so that they can be diffused in an effective manner. This session explores the instances of when these materials are discoverable and how they are being utilized in litigation.

A. How do the Procedural Rules Impact the Discoverability of Employee Handbooks and Driver Qualification Records in Trucking Litigation?

In litigation, there is often tension between what is discoverable and what is admissible. The Federal Rules of Civil Procedure (FRCP) govern the discovery process in trucking litigation. Specifically, under FRCP 26, parties are generally entitled to obtain any non-privileged matter that is relevant to any party's claim or defense, including documents, electronically stored information, and other tangible item. This rule is particularly significant when it comes to acquiring employee handbooks and driver qualification records, which may fall within the scope of discoverable information. FED. R. CIV. P. 26.

The admissibility of evidence is determined by its relevance to the case. Federal Rule of Evidence (FRE) 403 states that relevant evidence may be considered inadmissible if its probative value is outweighed by the risk of unfair prejudice, confusing the issues, or misleading the jury. Fed. R. Evid. 403. Therefore, it is possible for relevant evidence to be excluded if it causes undue delay, wastes time, or is unnecessarily repetitive. For instance, in a trucking case, the judge may exclude discoverable evidence, such as company policies, that have no merit.

Correspondingly, FRCP 34 allows parties to request the production of documents, electronically stored information, and other tangible items relevant to the case. The responding party must produce the requested materials or object to the request within a specified time frame. FED. R. CIV. P. 34(b)(2)(E)(ii). Failing to cooperate or respond may lead to sanctions under FRCP 37. Discovery sanctions are imposed for three primary purposes: (1) to ensure that a party will not benefit from its failure to comply, (2) to obtain compliance with court orders, and (3) to deter noncompliance. *Laboy v. Quality Automotive Services, Inc.*, No. 21CV2501RPKRML, 2023 WL 10354091 (E.D.N.Y. June 20, 2023). It is important to note that "courts have wide discretion in sanctioning a party for discovery abuses." *Id.* at 4.

B. Must Employee Handbooks and Driver Qualifications Be Disclosed?

The issue of whether employee handbooks and driver qualifications must be disclosed during discovery depends on your jurisdiction. In New York State Court, for instance, when a company admits vicarious liability over the actions of its drivers, then claims for negligent hiring and retention cannot be maintained provided the driver was acting within the scope of his employment at the time of the accident. *Karoon v. New York City Transit Authority*, 241 A.D.2d 323, 659 N.Y.S.2d 27 (1st Dept. 1997). The Court in *Karoon* reasoned that there was no need for a negligent hiring claim, for if the driver was not negligent, then there would be no basis for imposing liability on the employer. Conversely, if the driver was negligent, then the employer would be vicariously liable. Either way, discovery of employee handbooks and driver qualifications becomes a moot point. However, in instances when a plaintiff seeks punitive damages based upon gross negligence in hiring or retention of a driver, then discoverability of these items is likely. See *Watson v. Strack*, 5 A.D.3d 1067, 773 N.Y.S.2d 676, *Karoon*, *supra*.

Federal regulations significantly impact trucking litigation by establishing legal requirements and standards for company policies and procedures. Assuming that it is permissible in your jurisdiction, claims of negligent hiring, entrustment, or retention can lead to the discovery of a company's policies, hiring practices, safety programs, driver

compliance, and driving records. Establishing the first element of duty often relies on compliance with Federal Motor Carrier Safety Regulations (FMCSRs) and related state regulations.

The Department of Transportation (DOT) through the Federal Motor Carrier Safety Administration (FMCSA) is responsible for establishing and enforcing safety standards for commercial motor vehicles and their drivers. The FMCSRs outline the specific criteria that a driver must meet in order to operate a commercial motor vehicle. A driver is qualified to operate a commercial motor vehicle if he/she:

1. Is at least 21 years old;
2. Can read and speak English;
3. Can, by reason of experience or training, safely operate the vehicle;
4. Is physically qualified to operate a commercial motor vehicle;
5. Has a currently valid commercial driver's license;
6. Is not disqualified to operate a commercial motor vehicle; and
7. Has successfully completed a driving test in the type of vehicle the applicant will be expected to operate.

49 C.F.R. Section 391.11. Employee handbooks must incorporate these qualifications to ensure company policies align with the federal safety requirements.

Additionally, the FMCSR outlines various other regulations, including hours of service, vehicle maintenance, driver qualification files, and drug and alcohol testing. 49 C.F.R. Section 396. These regulations have been put in place to prioritize safety. For instance, the hours of service requirement sets a maximum time limit for drivers to operate their vehicles and mandates rest periods to avoid driver fatigue. Similarly, the vehicle maintenance requirement ensures the safety and roadworthiness of company vehicles. Further, drivers must undergo drug and alcohol testing in various situations, including pre-employment, random testing, post-accident testing, and reasonable suspicion testing. Finally, trucking companies must maintain driver qualification files that include the driver's employment application, a written record of inquiries made to previous employers and their responses, the pre-employment motor vehicle report, the results of any road test or a copy of the CDL, the annual review, the

motor vehicle report for the annual review, a certified list of moving violations and accidents for the annual review, and the medical examiner's certificate. 49 C.F.R. Section 391.51(a) to (c).

Ultimately, the FMCSRs establish the minimum standards that must be followed by trucking companies and drivers who transport property or passengers across state lines. The company is responsible for ensuring that its drivers know and comply with these regulations. Failure to comply with these regulations will negatively impact the company's safety record. To assess a company's safety and fitness performance, the FMCSA uses a rating system that considers various factors such as unsafe driving, fatigued driving, driver fitness, substance abuse, vehicle maintenance, hazardous material compliance, and crash history. Safety ratings are publicly available and can be used by shippers and consumers to decide which trucking companies to hire.

For instance, a trucking company challenged the FMCSA's final decision where they determined that the company's safety rating was "unsatisfactory." *Sorreda Transport, LLC v. U.S. Dept. of Transportation*, 980 F.3d 1 (1st Cir. 2020). The company argued that the FMCSA's investigation and the resulting decision were arbitrary and capricious, and thus, the agency's decision should be set aside. However, FMCSA's findings were supported by substantial evidence, including that the company was found to have falsified a road test for one of its drivers, failed to obtain motor vehicle records for several drivers within the required timeframe, failed to maintain medical examiner's certificates for some of their drivers, failed to keep accurate time records for others, and failed to install electronic logging devices to record entries as required by regulation. *Id.* at 3. Therefore, based on the numerous violations, the court upheld the FMCSA's determination that the safety rating was unsatisfactory and was neither arbitrary nor capricious under the applicable regulations.

Plaintiff's counsel often approaches trucking cases by focusing on issues such as driver fatigue, violations of hours-of-service regulations, destruction of evidence by the defense, false logbooks, pressure from the trucking company to meet an unreasonable delivery schedule, false driver qualification files, drivers with sleep apnea (or

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other sleep disorders), and punitive damages. Their end goal is to portray the trucking company as a bad actor that hires and retains bad drivers. With that, companies should be prepared to keep and maintain all required information as set forth in these regulations. Discoverability of these items will depend largely on the nature of claims asserted and the jurisdiction where the matter is venued.