

Keep on Truckin' - The Latest on Illness, Accidents, AI in the Transportation/Trucking Industry (Part I of II)

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Trucking Industry in CA

In 2022, California employed the second highest number of truck drivers in the United States at just under 186,140 drivers with an average salary of \$54,850.



Growth at up to 12% is expected in CA by 2026.



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AB-5 & Prop 22

- AB-5 intended to codify the distinction between employees and independent contractors
- Response by the voters was to approve Prop 22
- Union challenge to Prop 22 claiming it was unconstitutional succeeded...
- Until it was overturned by the Court of Appeals *Castellanos v State of CA, 2023 WL2473326 (Cal.Ct App. 2023)*
- California Supreme Court accepted the unions' request for review on June 28, 223



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Truckers and AB-5

- California Trucking Association (CTA) also separately filed suit in federal court to enjoin enforcement of AB-5
- District court granted injunction against AB-5
- Ninth Circuit Court of Appeals reversed the injunction and found that federal law did not preempt application of AB-5 to motor carriers *CTA v Bonta (2012) 86 CCC 382*
- SCOTUS denied review in June 2023



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AB-5 and the Fallout

- There are concerns that AB-5 will extend to other states
- Possible responses by truckers to AB-5:
 - Move out of CA
 - Become an employe
 - Deliver to California but not from California



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WC Exposure for Trucking Industry

The workers' compensation exposure for long haul trucking companies is significant. Drivers are in the greatest danger of injury from vehicular accidents and the illnesses associated with long hours on the road and little exercise.

Hazards include :

- vehicular accidents as a result of driver fatigue
- stress-related illnesses
- musculoskeletal problems, such as neck, knee, and back pain from extended driving or loading/unloading products
- drug use
- long hours at the wheel can result in repetitive motion injuries (RMIs).



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WC Exposure for Trucking Industry

- In 2020, there were 10,500,105 single-unit trucks , 2,979,277 combination tractor-trailers and 1005,459 buses registered in the US.
- 2,903.6 billion miles traveled y all motor vehicles, of which, 302.1 billion were large trucks



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WC Exposure for Trucking Industry

The Federal Motor Carrier Safety Administration (FMCSA) estimates that there are roughly 17 deaths and 7 non-fatal workplace injuries per 100,000 workers in the transportation, warehousing and utilities sectors. This means that thousands of workers suffer injuries workers and deaths each year in the trucking industry.

In 2022, there were 35,766 fatal crashes on the Nation's roadways, 4588 (12.8 percent) involved at least one large truck or bus. There were 5,215,000 nonfatal crashes, 440,00 (8.4 percent) which involved one large truck or bus.



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WC Exposure for Trucking Industry

- Fatal crashes include police-reported crashes involving a motor vehicle in which at least one person dies within 30 days of the crash.
- 26% of these crashes in 2020 were in work zone areas involving large trucks



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WC Exposure for Trucking Industry

- Tire defects account for around 35%, the most common cause, of all truck-related accidents, approximately 15,000 annually
- Most of these accidents occur during the day, between noon and 3 PM, up to 19%.
- 83% occur Monday through Friday
- 68% of all truck fatalities are passenger vehicle occupants



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- ERs/Insureds located in the US must adhere to Occupational Safety and Health Administration (OSHA) rules and recommendations for EE safety.
- If the ER/insured is located outside of the US, it is recommended that the insurance carrier/underwriter be familiar with the locale's applicable worker safety regulations.



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Trucking Industry

We should know:

- ✓ how many workers are employed by the insured
- ✓ what are the various positions they hold

Long haul trucking may involve a single licensed commercial driver who owns and operates his or her own vehicle. These drivers will generally operate either as common (for-hire) carriers or as contract carriers for one or more companies.



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Trucking Industry



Some trucking operations may involve large transportation companies that maintain fleets of vehicles numbering in the hundreds. Drivers for larger transportation companies are not independent operators, but are hired as employees of the company itself. These trucking companies may also employ managers, dispatchers, mechanics, warehouse workers, and clerical personnel.



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OSHA Records



OSHA requires ER/insureds with more than 10 employees to post Form 300A, which is a summary of the total number of job-related injuries that occurred within the previous year and were logged on Form 300.



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OSHA Records



Each February 1 through April 30, ER's must display Form 300A in a common area wherever Notices to EE's are usually posted. Employers are not required to post the OSHA Form 300 log.



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OSHA Records



Form 300A must include employment information about the average number of EE's and total hours worked during the calendar year. A company executive is required to certify all establishment summaries. If a company has no recordable injuries or illnesses, it is required to post the form with zeroes on the total



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OSHA Records



ERs are not required to submit the form to OSHA, unless asked by OSHA to do so. Companies should hold on to these records for a period of five (5) years following the year to which they pertain. Operations that have ten (10) or fewer workers, as well as specific companies that are listed on the OSHA website (<http://www.osha.gov>), are exempt from federal OSHA injury and illness recordkeeping and posting requirements.



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Trucking

Know the layout of the insured's premises. The base of operations for most long haul trucking companies will be located in freestanding structures. Their layout will generally consist of a reception area, offices, a dispatch room, truck terminals for the loading and unloading of freight, garages, repair/service areas, outdoor parking areas, restrooms, and an employee lounge.



Trucking

Know the insured's hours of operation. Hours vary from one long haul trucking company to another. Many will operate 24 hours a day, 7 days a week. Offices typically will be open from 7 a.m. to 6 p.m., with some extended hours possible in the evenings or on weekends. Truckers and dispatchers will work different hours than office personnel. We should be familiar with the trucker's various schedules.



Dept. of Transportation

The US Department of Transportation (DOT) is responsible for governing the hours-of-service regulations drivers are permitted to work in the US.

Truck drivers typically work more than 40 hours a week. Long hours on the road can increase the potential for fatigue-related crashes as well as the potential for long-term health problems for commercial motor carrier drivers.



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Dept. of Transportation

Federal Motor Carrier Safety Administration (FMCSA) issued a revised federal hours-of-service (HOS) rule for US truck drivers, which became effective in February 2012. This regulation reduces, on average, a driver's maximum allowable hours per week from 82 hours to 60 or 70 hours, depending on which option the carrier takes.



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Dept. of Transportation

The two options that a carrier (not the individual driver) can follow are: the 60-hour/7-day rule or the 70-hour/8-day rule. Each option has requirements for hours of driving and mandatory rest periods.

Violations can cost drivers \$2,700 in civil penalties and motor carriers \$11,000.



Record of Duty Status

According to the Dept. of Transportation (DOT):

- drivers must record their hours of service/duty status for each 24-hour period
- including hours the driver has operated the truck, has been off-duty, and has been on duty but not driving



Record of Duty Status



Logbooks must also be updated by drivers at every stop they make and whenever they cross state lines to calculate miles traveled. Federal Motor Carrier Safety Regulations (FMCSRs) have established timetables for drivers in the United States to file records with the motor carrier within 13 days of completing the approved log.



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Record of Duty Status

The driver's home terminal should keep the logbook until the 20th day of the next calendar month, and then the logbook should be forwarded to the carriers' principal place of business and retained for six months.



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What Type of Logbook?

- Some large long haul trucking companies have implemented electronic log systems (called "E-logs") that use advanced satellite location technology to monitor and keep track of truck movement and drivers' working hours.
- E-logs allow drivers to focus on driving and transporting freight without the responsibility of manually completing paperwork.



Physical Exam IS Required

- According to the DOT, each commercial truck driver in the United States must undergo a physical examination conducted by a licensed medical examiner who is listed on the Federal Motor Carrier Safety Administration (FMCSA) National Registry.
- Once the medical examiner has determined the driver is physically qualified to drive a commercial motor vehicle (CMV), then a Medical Examiner's Certificate is issued.



Physical Exam IS Required

A DOT physical exam is valid for up to 24 months. In other situations, the medical examiner may issue of certificate for less than 24 months if a driver's condition needs to be monitored (e.g., high blood pressure)



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Physical Exam IS Required

- Given that drivers may be required to load and unload trucks, or assist in these tasks, physical strength and agility will be required of these individuals.
- All truck drivers are required by law to pass the DOT Physical Exam before getting behind the wheel of a big rig. The FMCSA has set a variety of mental and physical health regulations that truckers must meet in order to fulfill the demands of a truck driving career.



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Personality Tests MAY Be Required

In addition to pre-employment physicals, some insureds require applicants to take formal personality tests as part of the pre-hire screening process. These tests are designed to potentially uncover personality traits and tendencies that will not typically show up on an ordinary job application form or during a face-to-face interview.



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Lodging/Accommodations

A unique exposure for long haul drivers is finding hotels and motels after their route has been completed for the day that will accommodate tractor trailers for overnight parking. For drivers of established routes, this may not be much of a concern since they will have previous knowledge of which hotels are available on their route; however, for new delivery routes, this could cause drivers to park farther from their delivery stops as well as impact their hours on the road if they need to drive an hour or so out of their way.



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Warehouse Safety

Long haul trucking companies that maintain warehouse operations will have loading and unloading operations conducted at the loading dock. A safe, well-organized dock will reduce worker injuries. The dock's traffic flow, including the arrival and departure of trucks, forklift operations, manual materials-handling equipment, and pedestrian traffic should be closely regulated.



Warehouse Safety

Traffic lanes for pedestrians as well as for vehicles should be clearly marked. Good verbal, written, and hand-signal communication is essential for a safe dock. Speed limits and warning signs (e.g., "Sound Horn" and "Proceed with Caution") should be posted throughout the area. A loading dock also may have blind corners that can contribute to an accident; convex mirrors should be installed at corners and the beginnings of aisles.



Warehouse Safety

Forklifts and other mechanically powered vehicles will be used if warehouse operations are conducted by the insured's employees. Improper use of forklifts and mobile equipment could result in the operator or other workers being injured by toppling cargo and materials or the equipment possibly overturning. The rated load capacity clearly marked on all forklifts. Safe operating procedures for all mobile equipment should be strictly enforced by supervisory personnel.



Warehouse Safety

All mobile equipment should be outfitted with overhead protection, such as roll cage. Forklifts should be equipped with motion/backup alarms. Mobile equipment should never be left unattended while the motor is running. When forklifts are left unattended the control levers should be placed in neutral, emergency brakes set, forks lowered, and power cut. The insured should be in compliance with OSHA 1910.178, Powered Industrial Trucks.



Warehouse Safety

Thorough training in the safe operation of forklifts is essential to minimize injuries. Forklift operators should be trained to inspect, drive, load, park, and refuel their vehicles properly.

Prior to operation, drivers should use a written checklist to assess the condition of their vehicles; gauges, warning lights, horns, motion alarms, forks, fork retainer pins, locks, tire pressure, and steering and brake functions should be inspected.



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Truck Maintenance

Maintenance of commercial vehicles is essential due to the amount of time they are on the road. Always ascertain if the insured has vehicle maintenance and repair services on the premises. If so, what are the qualifications, training, and experience of the insured's mechanics?

According to the FMCSRs, trucks should be inspected daily prior to and after each completed run. In addition, they must undergo a major inspection at least once every year. Commercial operators should also have their vehicle's brake systems tested regularly.



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Truck Maintenance

Whenever possible, technicians should avoid working on hot engines. Where this is not possible, extreme caution and common sense should be exercised. Smoking should be strictly prohibited in all repair bays.

It is recommended that mechanics be instructed to refrain from wearing any jewelry while working, particularly rings or neck chains, because these could become entangled in moving engine parts, possibly resulting in a bad injury.



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Truck Maintenance

To avoid possible eye or skin irritations due to contact with automotive fluids or harsh vehicle cleaning solutions used in wash tunnels, workers in these areas should be required to wear appropriate eye and hand protection (e.g., goggles, latex or neoprene gloves) and engage in frequent hand washing.

Maintenance/repair areas should be equipped with at least one emergency hand- and eye-wash station. Barrier creams should also be available to help prevent skin irritations. The insured should comply with OSHA standards 1910.133, Eye and Face Protection, and 1910.138, Hand Protection.



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Truck Maintenance

Other repair and routine vehicle maintenance, such as replacement of fluids (e.g., motor oil, transmission fluid, radiator coolant), repair of fixable equipment (e.g., brake calipers/rotors, alternators, fuel pumps), and replacement of no repairable equipment (e.g., brake pads, shocks, batteries, mufflers) may also be conducted on site.

Mechanics may be injured while making repairs. They may also be exposed to skin and/or respiratory irritations from caustic cleaning agents or other chemicals.



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Truck Maintenance

Mechanics may be injured while making repairs. They may also be exposed to skin and/or respiratory irritations from caustic cleaning agents or other chemicals.

If so, this may lead to CT injuries



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Truck Maintenance

When employees are repairing or working with equipment, hazardous chemicals (e.g., cleaning solvents, gasoline) may be used. The vehicle maintenance and repair area should be properly ventilated. The insured should be in compliance with OSHA standard 1910.94, Ventilation.



Truck Maintenance

If a truck is poorly maintained or has defective parts, there are several parties that could be liable: the manufacturer of the part, the manufacturer of the truck, the trucking company that operates the truck, or the mechanic responsible for repairs or maintenance. If there has been a truck accident that is attributed to equipment failure, look for a potential product liability lawsuit.



Safety Data Sheets

Workers should be made aware of hazardous substances to which they could be exposed. Safety data sheets (SDSs) must be available for workers to read.

It is highly recommended that all employees have a thorough knowledge of the chemicals they use or are exposed to when working. Employees have the "right to know," and insureds must provide all relevant information to their employees.



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Safety Data Sheets

The insured should be in compliance with OSHA standard 1910.1200, Hazard Communication.



OSHA has revised its Hazard Communication Standard (HCS) to align with the United Nations' Globally Harmonized System of Classification and Labelling of Chemicals.



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Safety Data Sheets

The requirement for revised hazard classification labels and uniform 16-section safety data sheets (SDSs) went into effect in June, 2015. Verify that the insured's workers have been trained to understand SDSs and hazard labels and that this has been documented.



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Hazardous Waste Materials

Mechanics also must take precautions when dealing with potentially hazardous waste materials. Fluids such as antifreeze should be evaluated for hazardous waste characteristics and dealt with accordingly if spilled or released. Antifreeze consists of water and ethylene glycol, neither of which demonstrates hazardous waste characteristics; however, as a result of use, the antifreeze may become hazardous based on metals or benzene content.

Another potential hazard is sludge (e.g., oil, grease, solvents, and dirt from routine operations) that accumulates in maintenance facility floor drains.



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No Smoking!

DOT regulation CFR 49, Section 397.13 indicates that drivers and other employees may not smoke or carry a lit cigarette, cigar, or pipe within 25 feet of:

- (a) a vehicle, which contains Class 1 materials, Class 5 materials, or flammable materials classified as Division 2.1, Class 3, Divisions 4.1 and 4.2; or
- (b) an empty tank motor vehicle which has been used to transport Class 3, flammable materials or Division 2.1 flammable gases.

Look for posted "No Smoking" signs in areas where vehicles are parked and/or serviced.



Gas It Up?!

- A potential hazard associated with gasoline, diesel, and LP (liquefied petroleum) gas-powered trucks is that employees could be burned as a result of fuel leaks ignited by a hot engine, hot muffler, ignition system, or other external ignition sources. However, the danger is lower for diesel trucks because diesel fuel has a higher flashpoint.
- Ascertain how does the insured store and dispense fuels for its trucks and how the EE's are trained to properly dispense fuel.



Gas It Up?!

- Where does the insured refuel its trucks? Because nearly one-half of fires involving trucks are caused by spillage during refueling, trucks should be refueled outdoors where there is little exposure to the premises' structures.
- Determine if fuel-dispensing pumps are suitable for use and if scales for weighing the liquefied gas (LP-gas) containers are accurately calibrated. LP containers should be stored outdoors, away from ignition sources.



Battery Recharging

- Find out where truck batteries are recharged. Battery recharging operations also require special precautions, as the corrosive chemical solutions (e.g., electrolytes) in batteries present a chemical hazard (i.e., on charge, they give off hydrogen, which can accumulate to explosive concentrations if ventilation is inadequate).
- During the charging operations, vent caps should be kept in place to avoid electrolyte spray. Ascertain that vent caps are functioning and that battery covers remain open during charging to dissipate heat.



Transporting Hazardous Materials

Does the insured transport hazardous materials? The Hazardous Materials Transportation Act (HMTA) authorizes the DOT to regulate the transportation of hazardous materials, including on public highways. Hazardous materials are defined as substances that have been determined to pose unreasonable dangers to health, safety, and property during transport activities.



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Transporting Hazardous Materials

A US motor carrier that transports such materials, whether interstate or intrastate, must comply with the Federal Hazardous Materials Regulations, 49 CFR 100-185. Regulations include shipping papers, labels and placards.



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Robbery

- Does the insured instruct its truck drivers on what to do in the event of a robbery? Drivers should be instructed to hand over any money and not to attempt any heroics.
- Most, if not all, commercial vehicles are equipped with two-way radios or cellular or satellite phones. GPS tracking devices?
- Are there silent alarms in any of its vehicles?



First Aid



The insured should provide workers at the office fully stocked first aid kits. Are first aid kits located throughout the office and in all trucks?

Have any of the insured's employees been trained in cardiopulmonary resuscitation (CPR) or first aid? Is there an automated external defibrillator (AED) on site and in all trucks with team drivers? Have employees been trained to properly use the AED? The insured should be in compliance with OSHA standard 1910.151, Medical Services and First Aid.



Growth of Trucking Industry

Shortage of drivers continues to be one of the greatest challenges facing the trucking industry today. Based on a 2019 report by the American Trucking Association (ATA) the industry was short roughly 60,000 drivers in 2018, up nearly 20% from the prior-year estimate of just over 50,000. The ATA warns that if current trends hold, the shortage could swell to over 160,000 by 2028.

To accommodate the industry shortage and growth, the trucking industry will need to hire roughly 1.1 million new drivers over the next decade — an average of nearly 110,000 per year.



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Growth of Trucking Industry

According to the ATA, the need to replace retiring truck drivers will account for over half of new driver hires (54%).

The second largest factor will be industry growth, accounting for 25% of new driver hires. In order to meet the growing demand for drivers, the industry acknowledges the need to recruit more women drivers. Women drivers make up only about 7% of the industry's driving population today.



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Improving the Gender Ratio in Trucking

In 2016, the Women in Trucking Association (WIT) partnered to create the WIT Index. The purpose of the index is to better quantify the number of women truck drivers and management team members in the trucking industry on a national level.



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Improving the Gender Ratio in Trucking

Women are increasingly attracted to the profession because of the equal pay and the greater demand for truck drivers. While there were 234,234 professional female drivers on the roads in 2018, it's still a male-dominated industry: Women made up 6.6 percent of the 3.5 million truckers.



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Improving the Gender Ratio in Trucking

Among companies reporting data, more than a quarter of the carriers confirmed a 28.7% increase in female drivers. In addition, fleet companies reported 19% growth in women drivers in 2017, which WIT views as a healthy trend, indicating that more fleets are serious about understanding the gender divide, which could pave the way for creating initiatives to improve the gender ratio.



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Trucking Terms

- Transloading
- Drayage
- Rail Drayage
- Intermodal
- Cartage



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Terms

Transloading is a shipping term that refers to the transfer of goods from one mode of transportation to another en route to their ultimate destination. Long-haul shipments of goods often involve multiple shipping companies, multiple modes of transit, or both.



Terms

Drayage refers to a specialty logistics service that carries freight over a short distance. It is an essential part of intermodal and container shipping industry. Drayage companies take containers in and out of warehouses, rail terminals, ocean ports and harbors.



Terms

Rail drayage portion of intermodal transportation is the movement of the intermodal container by truck from the shipper origin to the rail ramp, and also from the rail ramp to the receiver destination.



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Terms



Intermodal transportation uses two or more modes of freight, such as rail and truck, to deliver goods. This type of freight requires special considerations, such as the type of container that should be used.



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Terms

Cartage is the process of transporting goods by land (rail or road). The transportation is relatively for short distances, and the movement is usually within a region or between two closer towns. Cartage means the actual cost of transporting goods from one place to another.



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Highest Paid Trucking Jobs

- Ice road trucking
- Hazmat hauling
- Tanker hauling
- Oversized load hauling
- Luxury car hauling
- Team driving
- Owner-operator jobs
- Private fleets



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Prevailing Wages

Truck drivers are subject to all the prevailing wage requirements including the overtime rates when the work itself is deemed to be covered.

The Total Hourly Rate for a Laborer classification for Group 1 in Los Angeles County as determined by the Director in February of 2017 is \$52.08 per hour straight time, \$68.25 per hour overtime, and \$84.42 per hour Sunday, Holidays and double time



Wage Thieves

- Since 2011, the Labor Commissioner's Office has received more than 1,000 port trucking wage claims and issued 448 decisions in favor of the truck drivers with more than \$50 million in wages owed.
- Under SB 1402 (Lara), customers who contract with the listed motor carriers will now share civil legal responsibility and civil liability for the full amount found due for unpaid wages, unreimbursed expenses, damages, penalties and applicable interest owed to a driver.



Wage Thieves

SB 1402 (2018) defines a port drayage motor carrier to include any company or individual that hires or engages commercial drivers in the port trucking industry. Retailers and other businesses that hire companies on the Dept. of Industrial Relations (DIR) list are jointly and severally liable for future labor and employment law violations committed by these companies.

[https://www.dir.ca.gov/dlse/List Port Trucking CompaniesOutstanding Judgments.html](https://www.dir.ca.gov/dlse/List_Port_Trucking_CompaniesOutstanding_Judgments.html)



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Wage Thieves

“Companies are on notice that if they contract with a known wage thief, they will be held responsible for the exploitation of the drivers who carry their goods,” said California Labor Commissioner Julie A. Su. “This new law incentivizes trucking companies to pay up on judgments and put earned wages into drivers’ pockets.”



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Employment Relationship

- *Jesus Ortega Gonzalez, Applicant v. Major Transportation Services, Inc., a California Corporation, Baljinder S. Gill, individually, and dba Major Express Logistics, Peoplease LLC, National Interstate Richfield, Defendants* is a recent “noteworthy” WCAB panel decision regarding “Employment Relationship- Duel Employment”
- WCAB denied Recon, affirming the WCJs finding that the IW , was a truck driver for Major Transportation
- Found dual employment where IW was sent to one ER (Peoplease- general employer) to work for another employer (Major Transportation- special employer) and both employers have direction/ control over details of IW/ employee’s work and both benefit from that work.
- In lease-back situations involving PEOs, special employers generally receives WC coverage for joint employees from PEO through “ client policy” that covers claims for their joint employees under a single policy per LC 3602(d).



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AI and Evolutions in Transportation
Perspectives from a Futurist
by Eric Hunter

All images and photographs are by Eric Hunter
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