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

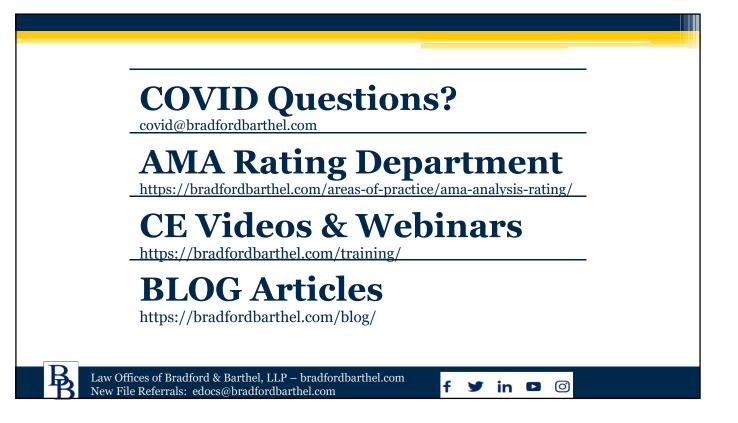
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By Nasir Adil, Kimberly Wagner & Eric Hunter *Law Offices of* Bradford & Barthel, LLP





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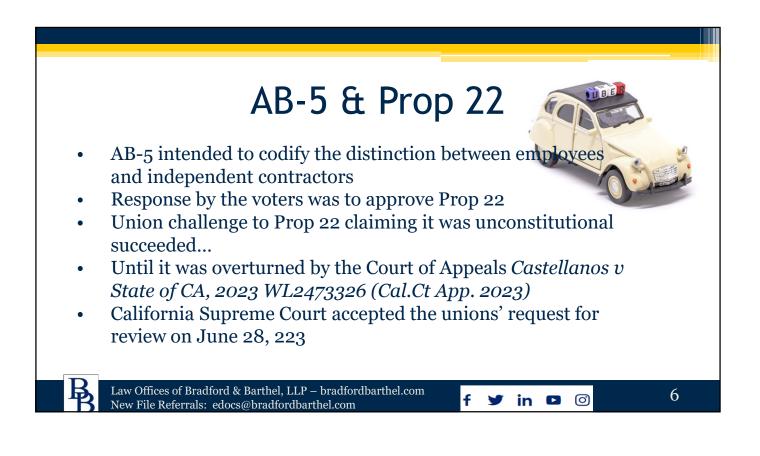
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# **Trucking Industry in CA**

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.

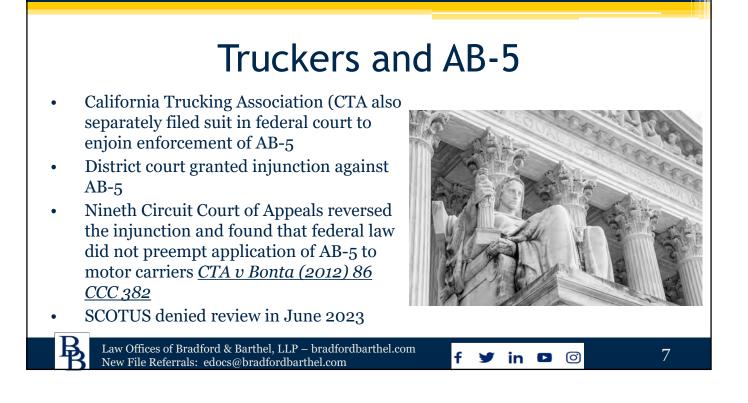
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# AB-5 and the Fallout

- 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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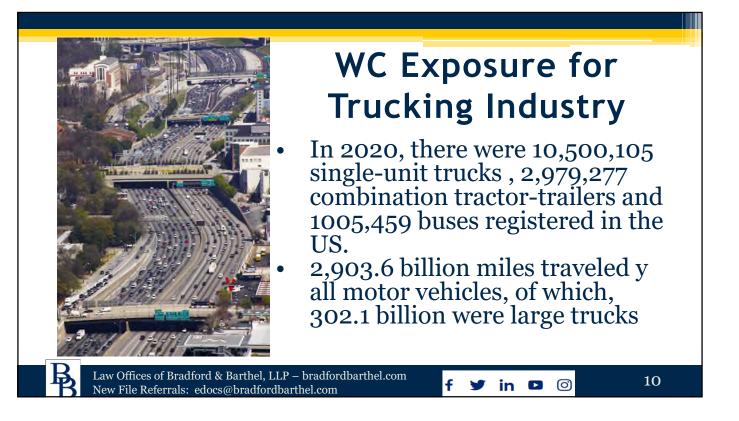
## WC Exposure for Trucking Industry

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

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

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- Fatal crashes include policereported 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



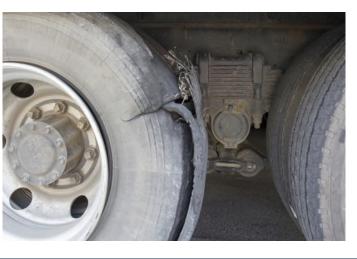
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#### WC Exposure for Trucking Industry

- 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



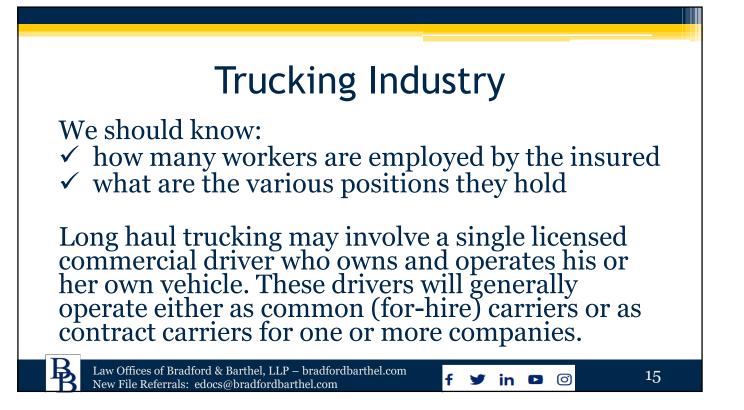
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- ERs/Insureds located in the US must adhere to Occupational Safety and Health Administration (OSHA) rules and recommendations for EE safety.
- If the ER/insured is located outside of the US, it is recommended that the insurance carrier/ underwriter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





#### **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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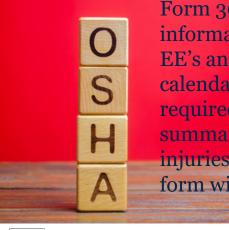
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# **OSHA Records**

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.

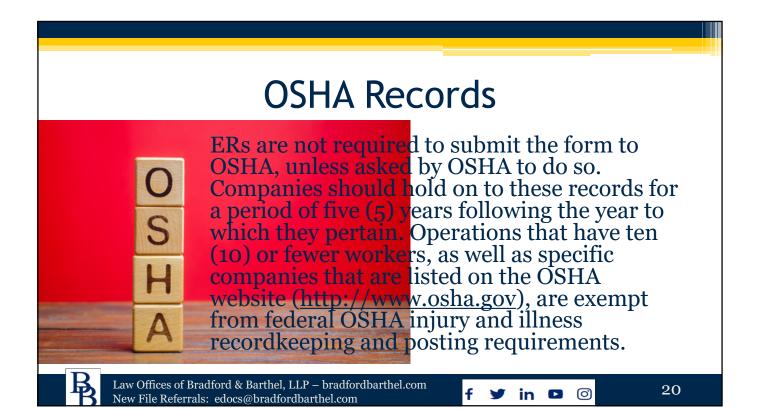
#### **OSHA Records**



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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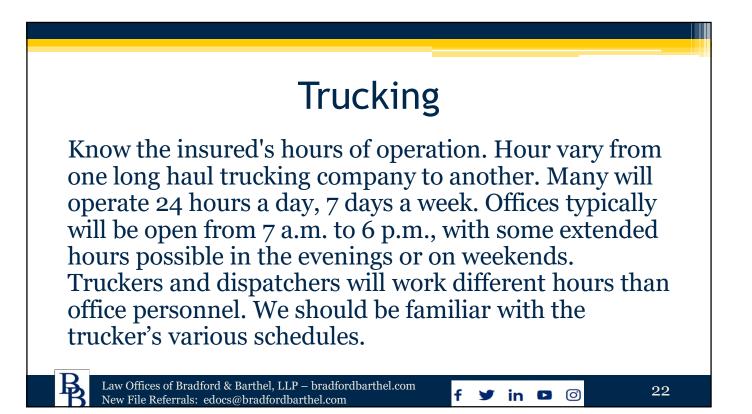
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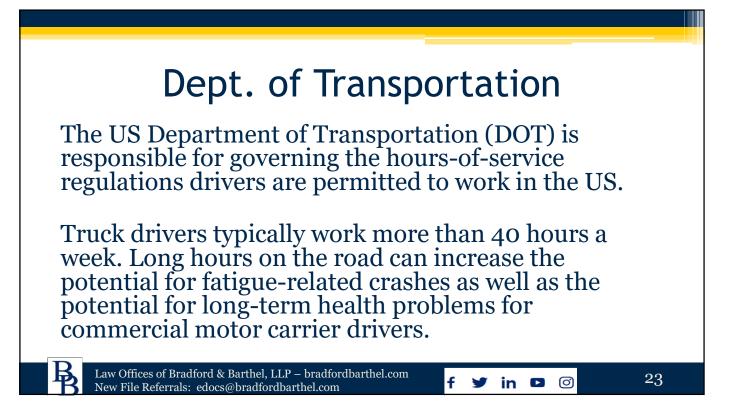
# Trucking

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.

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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

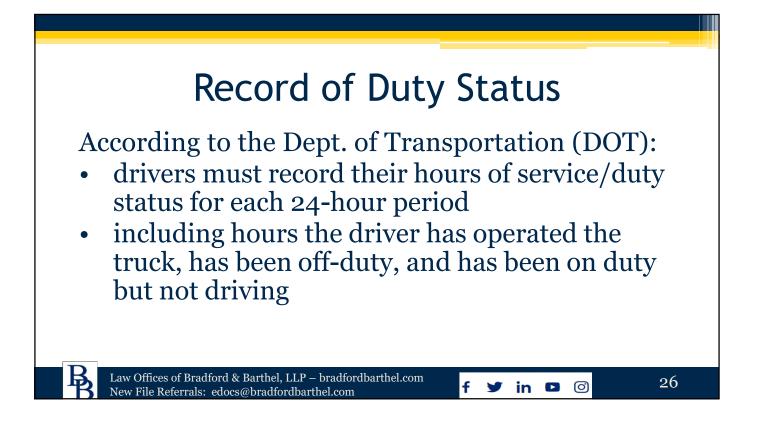
The two options that a carrier (not the individual driver) can follow are: the 60-hour/7-day rule or the 70-hour/8-day rule. Each option has requirements for hours of driving and mandatory rest periods.

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

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#### **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 20<sup>th</sup> 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.

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#### 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. Law Offices of Bradford & Barthel, LLP – bradfordbarthel.com 30 f У in 🖸 (O) New File Referrals: edocs@bradfordbarthel.com

#### 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 faceto-face interview.



# Lodging/Accommodations

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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.

### 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.

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#### 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

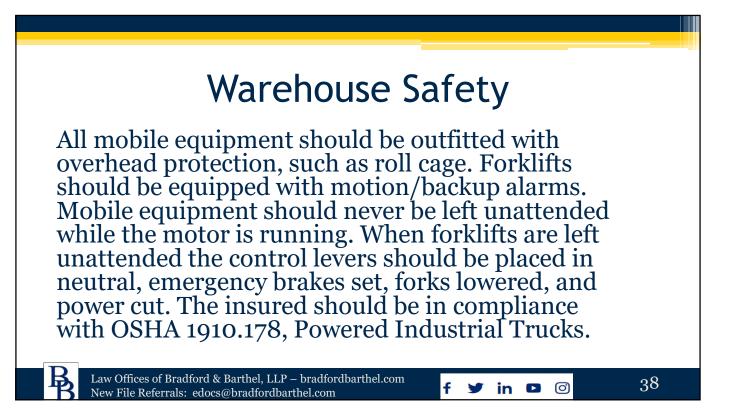
Forklifts and other mechanically powered vehicles will be used if warehouse operations are conducted by the insured's employees. Improper use of forklifts and mobile equipment could result in the operator or other workers being injured by toppling cargo and materials or the equipment possibly overturning.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

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#### 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

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

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

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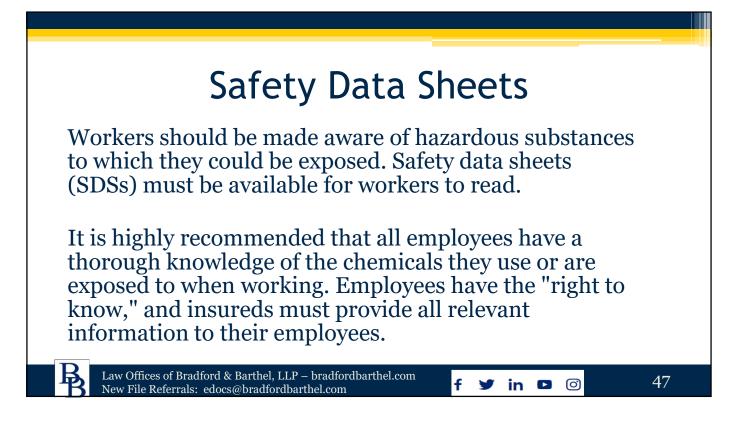
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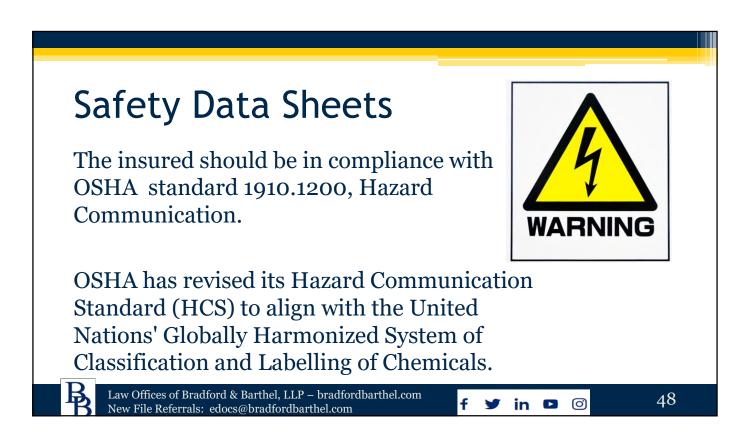
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If a truck is poorly maintained or has defective parts, there are several parties that could be liable: the manufacturer of the part, the manufacturer of the truck, the trucking company that operates the truck, or the mechanic responsible for repairs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

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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

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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.



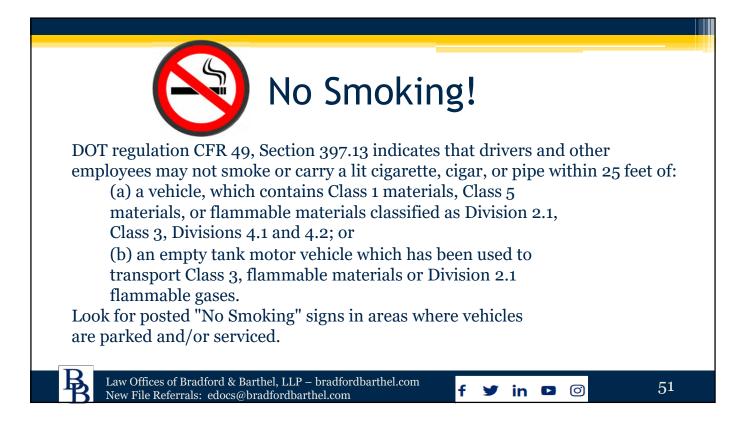
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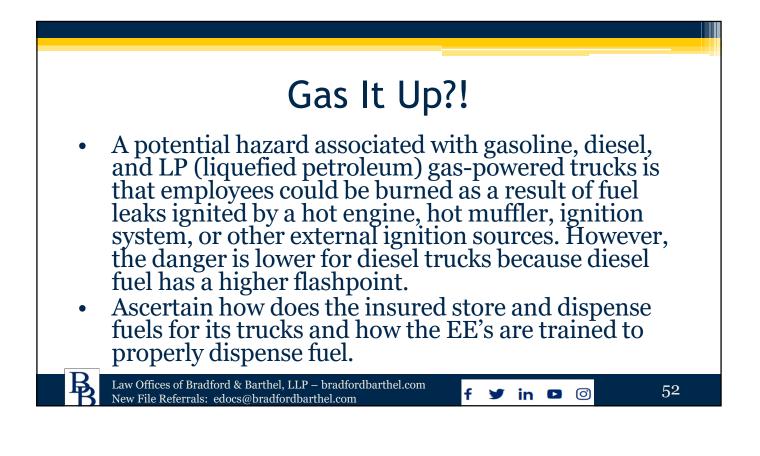
INHALATION HAZARD

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NON-FLAMMABLE GAS





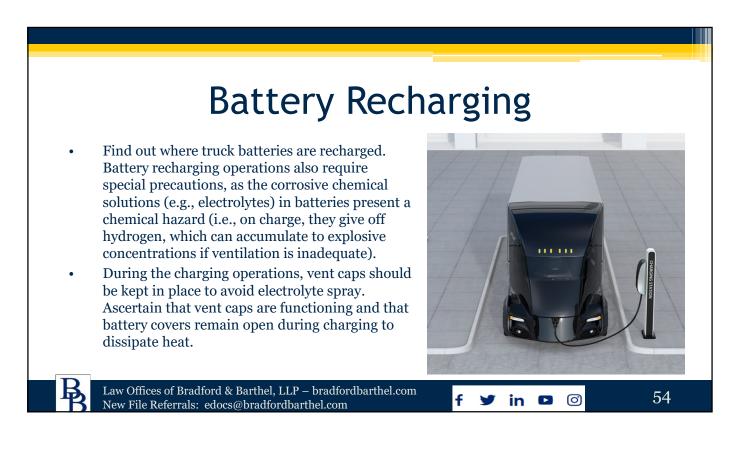
#### Gas It Up?!

- 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.

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#### 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**

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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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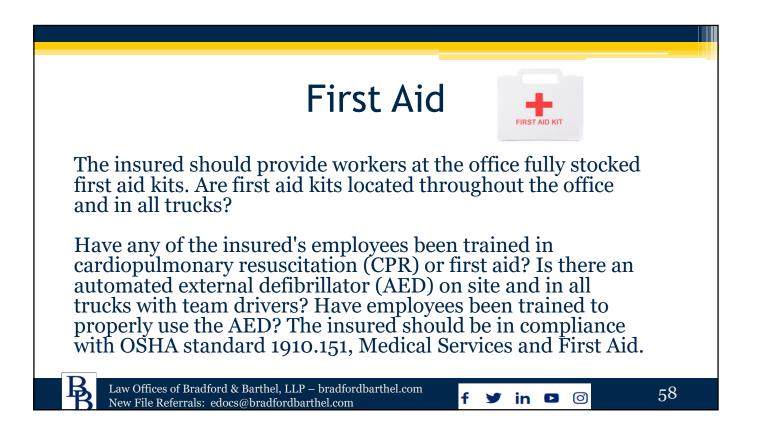
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# Robbery

- 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?





# **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**

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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

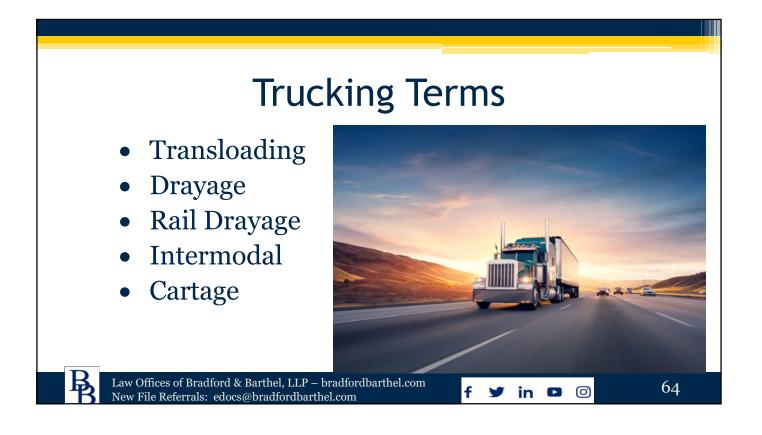
Among companies reporting data, more than a quarter of the carriers confirmed a 28.7% increase in female drivers. In addition, fleet companies reported 19% growth in women drivers in 2017, which WIT views as a healthy trend, indicating that more fleets are serious about understanding the gender divide,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

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#### 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.

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# 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. hipping. Drayage companies take containers in and out of warehouses, rail terminals, ocean ports and harbors.

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#### 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**

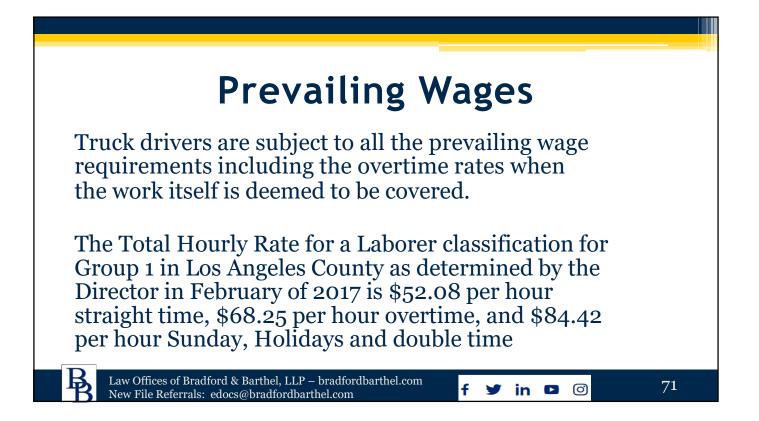
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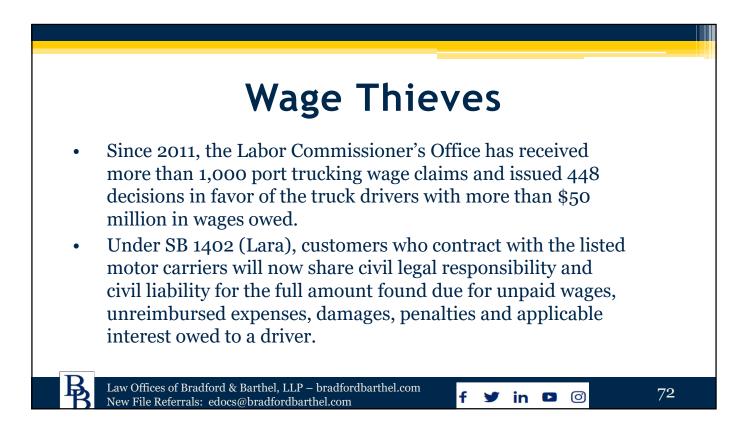
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- Ice road trucking
- Hazmat hauling
- Tanker hauling
- Oversized load hauling
- Luxury car hauling
- Team driving
- Owner-operator jobs
- Private fleets







# Wage Thieves

<u>SB 1402</u> (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 Compan iesOutstanding 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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