

Consultants Update

COVID-19

Rick Schweitzer

General Counsel and Government Affairs/HR Consultant
Gases & Welding Distributors Association

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Discussion Topics

- New Waiver of Pre-Employment Drug Test for Drivers Returning to Duty
- Extension and Limits on FMCSA Emergency Declaration
- Revisions to SBA Paycheck Protection Program Loans
- Advice for Drivers Encountering Demonstrations

FMCSA 90-Day Waiver of Pre-Employment Drug Test

- On June 5, FMCSA issued a waiver to allow employers to forego pre-employment drug testing for drivers who have participated in a controlled substance testing program within the previous 90 days of hire or rehire (prior rule was 30 days)
- The waiver is to get furloughed drivers back into CMV operations
- Waiver is effective through September 30, 2020

90-Day Waiver Terms

- The driver either: (i) must have been tested for controlled substances within the past 6 months, or (ii) participated in the random controlled substances testing program for the previous 12 months
- The employer must complete a pre-employment query of the Drug and Alcohol Clearinghouse, make the request for drug and alcohol testing history from the driver's prior employers for the past 3 years, and obtain an MVR for the past 3 years

FMCSA Emergency Declaration

- FMCSA issued emergency declaration March 12; now extended to July 15
- Exempts drivers and carriers from hours of service rules and all of Parts 390-399 when transporting emergency relief in response to COVID-19 crisis
- But as of June 15, the exemptions are limited to transportation of:
 - Livestock and feed;
 - medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19; and
 - supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19 such as masks, gloves, hand sanitizer, soap and disinfectants

Paycheck Protection Program Revisions

- President Trump signed the PPP Flexibility Act into law on June 5
- The new law reduces the amount that borrowers are required to use on payroll-related expenses in order to be eligible for full loan forgiveness to 60% (down from 75%); this change allows borrowers to spend up to 40% of their loan on qualified non-payroll expenses and still have loan forgiven
- SBA and Treasury Department will issue rules and guidance, a modified borrower application form, and a modified loan forgiveness application implementing these legislative amendments to the PPP

PPP Revisions

- Extends the covered period for loan forgiveness from 8 weeks after the date of loan disbursement to 24 weeks (borrowers who have already received PPP loans retain the option to use an 8-week covered period)
- If borrower uses less than 60% of the loan amount for payroll costs during the forgiveness covered period, the borrower will continue to be eligible for partial loan forgiveness, subject to at least 60% of the loan forgiveness amount having been used for payroll costs

PPP Safe Harbors

- Safe harbor from reductions in loan forgiveness based on reductions in FTE employees, to provide protections for borrowers that are both unable to rehire individuals who were employees of the borrower on February 15, 2020, and unable to hire similarly qualified employees for unfilled positions by December 31, 2020
- Safe harbor for businesses unable to return to the same level of business activity by December 31, 2020 due to compliance with COVID-19 requirements or guidance from CDC, OSHA, etc.

Other PPP Terms

- Increases to 5 years the maturity of PPP loans that are approved by SBA (based on the date SBA assigns a loan number) on or after June 5, 2020
- Extends deferral period for borrower payments of principal, interest, and fees on PPP loans to the date that SBA remits the borrower's loan forgiveness amount to the lender (or, if the borrower does not apply for loan forgiveness, 10 months after the end of the borrower's loan forgiveness covered period)
- June 30, 2020, remains the last date on which a PPP loan application can be approved

Drivers and Demonstrations

- A number of truck drivers have encountered road blockages, demonstrations, looting and rioting while driving or making deliveries
- Some drivers have been arrested and charged for trying to drive through protesters blocking road
- Safety of the driver and other persons is more important than any potential cargo loss

Recommendations from ATA

- Plan for road closures—info from many sources available
- Contact the delivery location to get the most current and timely conditions (is it safe to proceed?)
- Plan ahead to park in a safe location and secure the truck
- Drivers should keep their company posted and updated as they travel
- Carriers should know where drivers are at all times
- What the driver is observing may be different than what a dispatcher is seeing on a computer screen; communication is key
- Drivers and carriers should utilize all technology available to them

Contact Info

Richard P. Schweitzer, PLLC
1717 K Street, N.W. Suite 900
Washington, D.C. 20006
(202) 223-3040 office
(703) 946-2548 mobile
rpschweitzer@rpslegal.com