



START WITH SAFETY

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WHEN CAN OSHA ENFORCE CHOCKING ON CMV TRAILERS?

Most employers know that OSHA requires chocking or securing trailers during loading and unloading, but many ask about an exemption for commercial motor vehicles (CMVs). However, that exemption is so narrow that it may not have much impact.

The OSHA regulations in 1910.26(d), 1910.178(k)(1), and 1910.178(m)(7) all require employers to use chocks or similar measures (such as dock locks) during loading or unloading operations. Federal OSHA created an agreement with the Federal Motor Carrier Safety Administration (FMCSA) for the FMCSA to retain jurisdiction over CMVs. That means OSHA does not have jurisdiction over CMVs and (in theory) cannot enforce chocking requirements on CMVs.

There is a catch to OSHA's enforcement limitation, however. In fact, there are several issues that employers should know.

Enforcement limits and exceptions:

- *First, many states run their own OSHA programs (state-plan states). Since the FMCSA jurisdiction agreement is with federal OSHA, states not subject to the agreement could enforce chocking requirements for CMVs.*
- *Second, OSHA expects employers to enforce chocking even on CMVs if the employer's workers (such as forklift drivers) are doing the loading or unloading. OSHA stated that the FMCSA regulations (and jurisdiction issues) apply only to motor carrier employers that fall under FMCSA authority, not to other employers whose workers load or unload CMVs.*

OSHA addressed these issues in a letter of interpretation dated March 7, 2011, outlining the history of the agency's agreement with the FMCSA. Here's the key portion:

...because the FMCSA parking brake regulations do not apply to companies which do not own, operate, or lease CMVs, OSHA is not pre-empted from enforcing standards requiring such companies to take precautions to protect their workers, such as forklift operators, from the movement of trailers.

In other words, if a manufacturing or retail employer is not subject to FMCSA regulations, but that employer has forklift operators unloading trailers, OSHA expects that employer to "take precautions to protect their workers ... from the movement of trailers."

Who is responsible?

The above letter also asked who is responsible for confirming that no employees are injured when the truck driver attempts to move the trailer. OSHA responded:

If the FMCSA's regulations do not cover a working condition, e.g., a manufacturing company that has employees exposed to this condition, then an employer must comply with OSHA's standards to ensure that forklift operators are not in the trailer or hostler when the driver attempts to remove the trailer from the loading dock. ... Thus, a PIT operator must be trained that he or she is not to operate a PIT on a trailer that has been backed to a company's dock, unless the trailer is properly secured or restricted from movement prior to boarding.



The bottom line is that even though OSHA cannot enforce wheel chocking requirements on CMVs, that limitation applies only to CMVs operated by a company under FMCSA jurisdiction. Other employers (like warehouses and manufacturing facilities) not under FMCSA jurisdiction must still protect workers from unexpected trailer movement.

In summary make a standard simple policy that states trailers "must be chocked when loading and unloading". Do not leave this up to employee interpretation.

KNOWING WHEN TO CONDUCT A POST-ACCIDENT TEST FOR YOUR CDL DRIVERS IS IMPORTANT (including chart)

You get the news: One of your drivers was in an accident. Unless this is something you deal with frequently, you probably get a little anxious about making sure you respond appropriately.

One of the questions I see quite often deals with when to conduct Federal Motor Carrier Safety Administration (FMCSA) post-accident drug and alcohol testing under Part 382. Although the regulations on post-accident testing haven't changed in decades, there still seems to be confusion about when to test, and we sometimes get questions asking something along the lines of, "We should've done a post-accident test and didn't. What should we do now?"

If you've ever been unsure of when to conduct DOT post-accident testing please reference the chart.

Contrary to what some motor carriers believe, you cannot DOT test drivers who are involved in an accident "just in case." In order to DOT drug and alcohol test a driver, certain criteria must be met. First of all, the driver must be operating a commercial motor vehicle (CMV) that requires a commercial driver's license (CDL) at the time of the accident.

If the driver holds a CDL but is not driving a vehicle that requires a CDL, the accident is not covered by Part 382. Once that criteria is met, you need to know under what circumstances to send your driver for DOT drug and/or alcohol testing. The included chart details when testing is required and the maximum time frames during which testing can occur, but testing should be conducted as soon as practicable after the accident.

LIVE EVENT

2023
SAFETY
ACADEMY

New Session Coming
Soon – Keep an Eye
on Your Inbox

ONLINE EVENT

2023
VIRTUAL
TRAINING

Electrical Safety
Feb 9 (English & Spanish)

Management Series:
Avoiding Negligent
Entrustment in Motor
Vehicle Accidents
Feb 21 (English)

CLAIMS CORNER

TX TO RECEIVE \$654M IN OPIOID FUNDS FROM CVS, WALGREENS

Texas Attorney General Paxton announced that the state is joining finalized opioid agreements with CVS and Walgreens totaling \$10.7 billion nationally, with CVS paying \$5 billion and Walgreens paying \$5.7 billion. Texas and its local governments are slated to receive over \$304 million from CVS and \$340 million from Walgreens. This brings the total

amount of settlement funds from attorneys general investigations and litigation against the pharmaceutical industry for its role in the opioid crisis to more than \$50 billion.

In addition to the financial settlement, CVS and Walgreens will comply with court-ordered injunctive relief that requires the pharmacies to monitor, report, and share data about suspicious activity related to opioid prescriptions.

Now that Texas and other states have joined these settlements, the settlement deal will enter the second phase before CVS and Walgreens begin making payments. Local governments will be given the option to join the settlement, and if there is sufficient sign-on from states and local governments around the country, the payments will start during the second half of 2023.

CVS's payments will be spread over 10 years, and Walgreens' payments will be spread over 15 years. As with the other opioid settlements, nearly all of the settlement funds from CVS and Walgreens must be used to remediate the opioid crisis, including prevention, harm reduction, treatment, and recovery services.

Scenario	Employer Responsibility
Someone involved in the accident dies	
Within 8 hours of the accident	DOT drug and alcohol test the driver
After 8 hours but within 32 hours of the accident	DOT drug test the driver
Someone involved in the accident is immediately taken away from the scene of the accident for medical treatment and the CDL driver receives a citation	
Within 8 hours of the accident	DOT drug and alcohol test the driver
After 8 hours but within 32 hours of the accident	DOT drug test the driver
A vehicle involved in the accident incurs disabling damage and is towed from the scene and the CDL driver receives a citation	
Within 8 hours of the accident	DOT drug and alcohol test the driver
After 8 hours but within 32 hours of the accident	DOT drug test the driver

If these criteria are not met, then you cannot DOT drug or alcohol test a driver after an accident.

What if you realize after 8 or 32 hours that you should have conducted DOT post-accident alcohol and drug testing, but you didn't?

There's no way around it: Failing to conduct post-accident testing when required to by the Federal Motor Carrier Safety Regulations (FMCSRs) is a violation, and if you're audited, you could be fined. So, what should you do if you realize — too late — that one of your drivers should have been tested after an accident?

Don't make things worse. First of all, do NOT send the driver for testing past the 8- and 32-hour testing windows. This will only compound the problem and add another violation to your list of offenses. Instead, document why the driver wasn't tested. Own up to your mistake and explain how the error occurred.

Document the mistake and a path forward. Recognizing your error doesn't matter if you don't take steps to prevent it from happening again. Identify the root cause of the problem and come up with a plan to fix it. Perhaps your dispatchers need better training so that they know what questions to ask a driver after an accident. Maybe you need to contract with a collection site that will perform testing outside of normal business hours or provides mobile testing services. Or maybe you just didn't understand the regulation correctly and you need to brush up on

the FMCSRs. Whatever the problem, detail — in writing — what you will do to prevent it from happening again.

Follow your plan and make improvements. Documenting the mistake and laying out a plan for improvement won't absolve you of the violation, but it will help you demonstrate to an auditor that you've made a good-faith effort to prevent the mistake from recurring. Such documentation, especially if you can demonstrate that you haven't made the same mistake since, may result in a lower fine.

Trying to hide a violation in the hopes that an auditor will miss it is not a winning strategy: At best, the auditor will think you don't understand the regulations, and at worst, the auditor may suspect deceit and will put your records under more intense scrutiny.

What are the consequences of failing to conduct DOT post-accident testing?

In addition to receiving a financial penalty if failure to conduct DOT post-accident testing is discovered during an audit, your motor carrier's safety rating may be affected if the auditor finds a pattern of failing to post-accident test.

Key to remember: Know when and when not to conduct DOT post-accident testing on drivers and if you make a mistake, document it so you can show a good-faith effort to fix the problem in the case of an audit.



Sakar Multi-Purpose Helmet

Hazard: Head Injury

ZLINE Gas Range (Expanded)

Hazard: Carbon Monoxide Poisoning

Lifetime Hot Chocolate Pot

Hazard: Fire

Vanessa Fire Table

Hazard: Fire

Meguiar's Headlight Sealant

Hazard: Risk of Poisoning

MI Vinyl Single-Hung Window

Hazard: Fall, Serious Injury

LG 86-Inch Smart TV & Stand

Hazard: Tip-Over, Entrapment

BISSELL Cordless Wet Dry Vacuum

Hazard: Fire

American Honda Talon 1000 ROV

Hazard: Crash, Injury

Polaris Sportsman/Scrambler ATV

Hazard: Fire