

TLC COMPANIES **Safety**insider®

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Bob's Corner

As we wind down 2018, are we ready to begin another exciting but challenging year in 2019? Our trucking clients are the foundation of TLC's business and as the safety team visits our clients; we collect and acknowledge those areas where we can improve and assist. These newsletters also help to outline and inform of upcoming changes in the industry. We certainly appreciate each client and continually refine our business to improve our services. The focus of this newsletter is primarily risk management aspects that drive the reduction in risk, and to take safety to higher levels with our client companies. But safety always comes with many challenges... and so does compliance!

December 18, 2017 was the date of implementation of ELD's. The grace period was until April 2018, but now unless your lanes of travel fall under the exemptions, ELD's are required. During many training sessions prior to implementation, the negative feedback was very discouraging. Since it has been in place, it is amazing how feedback turned positive. Now all trucking companies and their drivers are on the same playing field and must comply. Wait times, improved logistics and higher rates from shippers are adding to driver pay and retention. However, a major shortage of drivers is not likely to change in the future, so this will always be a challenge.

Now, with the ELD's, FMCSA is asking for input on the hours-of service regulations. The areas likely to change with your input include the following:

- Updating the 100 air-mile exemption
- Changing the adverse-driving conditions exemption
- Removing or changing the 30-minute break requirement
- Modifying the split-sleeper exemption (often the most criticized)
- Providing an extension to the 14-hour rule

For the first time in more than 20 years, FMCSA has also updated and issued official guidance on personal conveyance (PC). There are 10 essential elements that are covered later in this newsletter, but none more important than "PC is not a requirement and it is up to the motor carrier".

Are your drivers safe? No, not just OTR accidents, but around and in their truck, and on and off their trailer! Did you know that 4 of 5 injuries with drivers are not from MVA's? They are from slip/trip/falls, material handling and other similar incidents. But also realize that the most costly accidents are MVA's. This legal climate is often frightful and very costly. I shared with many of our clients the \$89 million lawsuit in Texas from a trainee driver on an expedited load. The other party crossed the center line on a divided highway and came into the driver's path on icy roads. Or the \$15 million lawsuit from a JB Hunt driver who went out of route and killed a driver and passenger that pulled out in front of him. The contention is if he did not go out of route, the accident would not have occurred. The bottom line is liability with "Big Trucks" can be substantial.

Let us know if you need assistance with the development of specific safety systems, or if we can conduct a safety meeting or other activity for you! Again, clients are our most valuable asset at TLC and anytime we can help you, let us know! Stay Safe and Happy during the very busy Holiday season and the upcoming New Year!

Cheers,

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ACA, Affordability & 2019 Planning

The Affordable Care Act (ACA) continues to be a concern for Applicable Large Employers (ALE's). An ALE is generally an employer with 50 or more Full-Time and Full-Time-Equivalent employees, including companies that are part of a control group (common ownership) with a combined total of 50 or more Full-Time-Equivalent employees. To avoid penalties, ALE's should ensure that health plans they're offering meet coverage and affordability requirements.

ALE's may face penalties if they don't provide affordable coverage options meeting two minimum coverage requirements, "Minimum Essential Coverage" (MEC) and "Minimum Value" (MV). MEC covers mostly preventive care services, while MV provides major medical coverage equal to Marketplace bronze-level coverage (approximately 60% of healthcare costs overall). If you're participating in the TLC plan, the plan meets both ACA coverage requirements. If you offer any other health plan to your employees and you're unsure if the plan meets these requirements, consult with your health insurance carrier or broker. Your plan's Summary of Benefits and Coverage (SBC), produced by your health insurance carrier, should also indicate whether or not your plan meets MEC and MV requirements.

Another ACA requirement that could create penalty issues for ALE's is the "affordability standard." The affordability standard is the highest percentage of household income an employee can be required to pay for monthly premiums, for Single coverage, based on the least-expensive employer-sponsored plan offered that meets the ACA coverage requirements. The IRS established the affordability percentage at 9.5% starting in 2015, and this number is adjusted annually. In 2018, it was 9.56%, and in 2019 it will be 9.86%. Some employers choose to use a target wage level to base their employees' lowest cost on, even if there is a small number of Full Time employees earning below the target wage level. The risk of this choice is that an ACA penalty could be triggered if any employee purchases coverage through the Marketplace and receives premium tax assistance, which can happen when the employer-offered coverage is deemed unaffordable. However, the penalty for a plan being "unaffordable," as long as it meets MEC coverage requirements, is considerably less significant than the penalty for not offering at least MEC coverage to substantially all Full Time employees and their dependent children.

Since employers usually don't know their workers' household incomes, it is acceptable to base the affordability percentage on employees' incomes or the Federal Poverty Level. In fact, there are 3 "affordability safe harbors" that employers can use to calculate whether or not their plan is affordable to their workers. The safe harbor calculation used should be reflected with IRS-established codes on the employer's Form 1095-C filings. The affordability safe harbors are:

1. The employee's W-2 wages—as reported in box 1. (Form 1095-C Line 16, code 2F)
2. The employee's rate of pay as of the first day of the plan year. (Form 1095-C Line 16, code 2H)
3. The individual Federal Poverty Level (FPL) as of six months prior to the beginning of the plan year. (Form 1095-C Line 16, code 2G)

If you're calculating affordability on the employee's W-2 (box 1) wages, it's relatively straightforward as it is based on the actual W-2 for the year. For example, if the employee's annual wage is \$40,000, the most he or she should be charged monthly for Single coverage in 2019 is \$328.67 (monthly wage \$3,333.33 X 9.86%). If the employer is requiring the employee to pay more than this for Single coverage in the lowest cost plan option offered, an ACA penalty could be triggered if the employee receives a tax credit to help purchase coverage from the Marketplace. The challenge of the W-2 affordability calculation for the transportation industry is when there are per diem wages that would not be included in Box 1 of the W-2; it is then a lower wage on which to base the affordability calculation.

Here are a few more examples of employee wage-based affordability calculations:

Employee's Annual Wage	Monthly Wage	Max Monthly EE Single Cost
\$25,000	\$2,083.33	\$205.42
\$30,000	\$2,500.00	\$246.50
\$35,000	\$2,916.67	\$287.58
\$40,000	\$3,333.33	\$328.67
\$45,000	\$3,750.00	\$369.75
\$50,000	\$4,166.67	\$410.83

If you're calculating affordability on the employee's rate of pay, you must use the employee's hourly rate of pay as of the first day of the plan year, multiplied by 130 hours to get their monthly pay, then apply the affordability percentage. Note that 130 hours represents 30 hours per week, which results in a lower total than the typical Full Time 40 hours per week, but this is the required calculation if you're using this safe harbor. **For example**, if the employee's hourly rate is \$25/hour, the most he or she should be charged monthly for Single coverage in 2019 is \$320.45 (monthly wage \$3,250 X 9.86%). If the employer is requiring the employee to pay more than this for Single coverage in the lowest cost plan option offered, an ACA penalty could be triggered if the employee receives a tax credit to help purchase coverage from the Marketplace. The rate of pay calculation method can be a challenge for the transportation industry, since most drivers are paid by the mile rather than by the hour.

If you're calculating affordability using the Federal Poverty Level (FPL), this is the most straightforward of all, as it is not based on employees' pay but on the FPL as established by the IRS – see chart below. An employer is most likely to avoid all ACA penalties when using this calculation to establish employees' portion of premiums, as long as the plan provided meets both the MEC and MV coverage requirements.

Federal Poverty Level (FPL) affordability calculation over the last few years:

Calendar Year	Prior Year FPL	Monthly FPL	Max Monthly EE Single Cost
2015	\$11,670	\$972.50	\$94.24
2016	\$11,770	\$980.83	\$95.04
2017	\$11,880	\$990.00	\$95.93
2018	\$12,060	\$1,005.00	\$96.08
2019	\$12,140	\$1,011.67	\$99.75

Planning Ahead for 2019: If you have not already done so, now is the time to review your health plan to ensure it is meeting ACA coverage and affordability requirements for 2019. You may need to adjust your contribution levels to achieve affordability, decide if you're using one of the above safe harbors, and document your calculations. Reviewing employees' PT/FT status for accuracy may also help with affordability calculations; an employee working Part Time (less than 30 hours/week) should not be classified as Full Time or offered benefits. You may also need to verify with your health insurance carrier or broker that your plan meets the ACA coverage requirements.

TLC's Aetna medical plan meets the ACA coverage requirements, and we have recently reviewed affordability and employee PT/FT statuses with ALE's participating in the TLC plan. If you do not participate in TLC's Aetna medical plan, and would like a no-obligation quote, please call TLC Benefits at 800-825-3832.

Late Claim Reporting

Reporting workers comp claims in a timely manner is important. While late reporting of workers comp claims by the client does not affect the employee's benefits, it often causes issues with claims handling process and usually **increases the cost to the client**.

Following are a few of the dangers of reporting workers compensation claims too slowly:

1. It jeopardizes investigation of workers compensation claims
As time goes on, it will be harder for your insurance carrier to conduct an investigation to gather information to determine the cause and extent of the injury. If there is anything about the claim that you wish to dispute, **it is more difficult without this early evidence.**

2. It can increase the cost of the claim
The cost of the claim gets higher and higher for each day it is not reported. According to a study by the Hartford Financial Service Group, claims reported 7-14 days after the injury cost 18% more than those filed within a week of the injury. **Wait 15-28 days and the costs jump 30%.**

3. It hurts employee morale
When an injury claim is not reported in a timely manner to the carrier for proper handling, how does your employee feel when they realize their claim has not been reported yet? **They may feel neglected** or that they are not a valued employee because their injury seems to not be important to you.

Reporting workers compensation claims late can result in a disgruntled employee, who now has no motivation to return to work (which means the claim costs will likely increase even more).

4. Potential for litigation increases
The longer a claim drags on, the higher the potential for litigation. The employee may seek additional medical opinions or treatment, or begin to wonder if the employer is retaliating against them for their injury. **Swift resolution of the claim is best for all parties involved.**

5. Reporting workers compensation claims too late may violate state law
Each state regulates workers compensation claim reporting. In Wisconsin, for example, companies are required to report injuries to the state with seven days of being informed by their employee. Check with your state for specific requirements.

When to report a claim
To minimize your workers compensation claim exposure, make sure to report your claims directly to TLC immediately. Stay proactively involved with your claim adjusters and your employee. Have a plan in place to accommodate light duty restrictions.

If you're unsure the injured worker will need medical attention, call TLC to report anyway. Then it will be filed as a "notice only" in the event it should escalate to a more serious injury.

In the end, you will save money by reporting workers compensation claims immediately and will reduce the potential for litigation.

Pre-Employment Screening Program

The Pre-Employment Screening Program (PSP) is a voluntary program that motor carriers use to help evaluate the safety of drivers they are considering hiring. PSP records contain data from the Motor Carrier Management Information System (MCMIS) and include five years of crash history and three years of 'roadside inspection history'.

In 2017, FMCSA performed an evaluation of the Pre-Employment Screening Program (PSP). This was in response to two safety recommendations issued by the National Transportation Safety Board (NTSB) after its investigation of a June 25, 2016 commercial vehicle crash in Chattanooga, TN. The 2017 study analyzed the safety impact of PSP and found that motor carriers using PSP had, on average, 8% fewer crashes and experienced a 17% reduction in out-of-service rate as compared to motor carriers who did not use the program.

The NTSB investigation also revealed that the driver's PSP record included many federal violations. However, the motor carrier responsible for the involved commercial vehicle had not used PSP to evaluate the driver.

Expanding a motor carriers' usage of PSP will help accomplish the mission to reduce crashes, injuries, and fatalities involving large trucks and buses.

Please keep in mind that TLC does NOT run PSP reports. We can obtain the signed release for our clients, however, since we do not evaluate or screen for many items on the report, like Hours of Service or Vehicle Maintenance, we decided not to collect this data. The MVR contains much of the pertinent data we need in our screening process.

Top Safety Citations of 2018

With one newcomer to the list — eye and face protection — and half of the violations coming from the construction industry, the U.S. Occupational Safety and Health Administration announced the preliminary top 10 most frequently cited workplace safety violations for fiscal year 2018.

Fall protection, a general requirements standard, was named the top violation, its fifth straight year at the top with 7,270 violations, according to Patrick Kapust, Washington, D.C.-based deputy director of OSHA's Directorate of Enforcement Programs, who presented the list at the National Safety Council Congress and Expo in Houston.

Other top violations included:

2. Hazard communication: 4,552 violations
3. Scaffolding: 3,336 violations
4. Respiratory protection: 3,118 violations
5. Lockout/tagout: 2,944 violations
6. Ladders: 2,812 violations
7. Powered industrial trucks: 2,294 violations
8. Fall protection: 1,982 violations
9. Machine guarding: 1,972 violations
10. Eye and face protection: 1,536 violations

"I encourage employers to look at this" list, said Mr. Kapust. "It could be used as a guide for employers on what they should look at" when developing safety programs.

Mr. Kapust said most of the violations for failing to provide eye and face protection, a newcomer to the list, stemmed from the housing industry, with roofers, house framers and other contractors cited often. He suspects that some contractors are doing jobs they haven't done in the past and that a new focus on eye and face protection could help avoid citations.

Violations in the electrical, wiring methods, components and equipment category were bumped from the top 10 list in 2018.

Deborah Hersman, National Safety Council president and chief executive officer, said the annual list goes a "long way toward keeping (workers) safe."

"The OSHA Top 10 list calls out areas that require increased vigilance to ensure everyone goes home safely each day," she said in a statement.

Tax Reform Resources

The IRS reminds business owners with questions about the Tax Cuts and Jobs Act that there are several resources to help answer their questions. The legislation passed in December 2017 changes many areas of the tax law, including some that affect businesses. Here are some of the resources on [IRS.gov](https://www.irs.gov) that can help:

- **IRS.gov/taxreform.** The IRS created the Tax Reform page to highlight what taxpayers need to know about the tax law changes and how they affect taxpayers. This page also links taxpayers, businesses and tax professionals to news releases, recently updated publications, notices, legal guidance, Tax Reform Tax Tips and other resources related to the legislation.
- **Fact sheets.** IRS posts fact sheets on a wide range of topics, including tax reform. The depreciation fact sheet has information about new rules and limitations for depreciation and expensing under the new law.
- **Publications.** To help business owners understand the new law, the IRS has updated several publications, including Publication 15, Circular E, Employer's Tax Guide.
- **Frequently asked questions.** To help employers and taxpayers, the IRS posted FAQs on these topics:
 - o How to use the Withholding Calculator.
 - o Changes to the Withholding Tables.
 - o The employer credit for paid family and medical leave. This is a general business credit that employers may claim based on wages paid to qualifying employees while they're on family and medical leave.
- **Tax tips.** Business owners can subscribe to get tax reform tips and other easy-to-read tax tips by e-mail from the IRS throughout the year.
- **E-News.** The IRS issues regular updates on small business topics, including tax reform. It's easy to subscribe to this email service.

The IRS will give more information about business-related tax law changes throughout the year. The agency will update [IRS.gov/taxreform](https://www.irs.gov/taxreform) to reflect changes as they develop.

FMCSA Onsite Investigations

Any onsite investigation — even a focused review — performed by the Federal Motor Carrier Safety Administration (FMCSA) has the potential to result in a safety rating for a motor carrier.

As a part of its Compliance, Safety, Accountability (CSA) enforcement model, FMCSA may perform either an onsite focused or comprehensive investigation. To understand why a focused investigation may result in a safety rating, you must look at the components of the compliance review contained in the comprehensive investigation.

Comprehensive investigation

A comprehensive CSA investigation contains the elements of a DOT audit (compliance review). It examines all areas of compliance, and violations are scored in accordance with Appendix B to Part 385. The model categorizes areas of compliance into six factors:

- Factor 1 General: Parts 387 and 390;
- Factor 2 Driver: Parts 382, 383, and 391;
- Factor 3 Operational: Parts 392 and 395;
- Factor 4 Vehicle: Parts 393 and 396;
- Factor 5 Hazmat: Parts 397, 171, 177, and 180; and
- Factor 6 Accident: Recordable Rate.

Serious violations within each category are identified as either critical or acute.

Critical violations relate to a breakdown in a carrier's management controls. For each pattern of noncompliance with a critical regulation during a compliance review, one point will be assessed to that safety rating factor. There is an exception, however. For each pattern of noncompliance with a critical regulation relative to Part 395, Hours of Service of Drivers, two points will be assessed.

For **acute** violations, noncompliance with a single regulation is considered so severe that it requires immediate corrective actions by a motor carrier. For each instance of noncompliance with an acute regulation during a compliance review, 1.5 points will be assessed to that safety rating factor.

The points accumulated during the audit from all acute and/or critical violations from all factors are used to rate the carrier as:

- Satisfactory: 0 points,
- Conditional: 1 point, or
- Unsatisfactory: 2 or more points.

Focused investigation

A focused investigation is a CSA intervention that targets one or more areas of compliance using CSA BASICs (Behavior Analysis and Safety Improvement Categories). For example, if your roadside inspection data show violations in the Hours-of-Service Compliance BASIC, the FMCSA will audit you using Factor 3 (Operational: Parts 392 and 395) from the compliance review model. The regulations limit the auditor to the use of factors with acute and critical violations during any investigation, even carrier visits triggered by CSA data.

Focused investigations will not result in Satisfactory safety ratings because not all regulatory parts are examined. However, it is possible that an onsite focused investigation may result in no rating — or a Conditional or Unsatisfactory rating — if problems are discovered.

How can that be? If one BASIC is audited and results in 1 or 2 points, the carrier will receive a Conditional or Unsatisfactory based on Appendix B to Part 385. It has achieved the minimum number of accrued points so there is no need to perform an entire compliance review.

Onsite focused vs. comprehensive investigations

Over the past several years, onsite focused investigations have exceeded the number of compliance reviews.

<u>Fiscal Year</u>	<u>Onsite focused investigations</u>	<u>Onsite comprehensive investigations</u>
2017	7,497	6,386
2016	7,112	5,979
2015	8,137	5,726

Cell Phone and Texting

Please do not text and drive, as a Grand Island Express (GIX) driver and GIX were both fined when a driver was texting and did not see a car at a traffic light and rear-ended another driver. The driver survived, however, he had serious injuries and was awarded \$16.5 million in damages, \$9.5 million in loss and harm, plus \$500,000 from the driver and \$6.5 million from GIX. Texting and driving can be very costly. DO NOT TEXT AND DRIVE.

Per Diem Deduction Eliminated

Under the new tax reform legislation motor carriers and owner operators can continue to deduct eligible per diem expenses. Unfortunately, the new tax law eliminated per diem deductions by employee drivers on their personal tax returns. At the TLC Companies, we can structure per diem programs for our clients that comply with current IRS requirements. Call your CAM rep today to learn more.

DOL Creates FLSA Compliance Videos

The U.S. Department of Labor's (DOL) Wage and Hour Division (WHD) added brief, plain language videos to its website to provide employers with the basic information they need to understand their obligations and to comply with the Fair Labor Standards Act (FLSA). The videos can be found at <https://dol.gov/WHD/flsa/videos.htm>. To create the videos, the WHD consulted employers and other stakeholders. Five videos are available with more to be added later:

Topic 1: Coverage. The video explains whether an employer is required to comply with the FLSA, including minimum wage, overtime, recordkeeping and child labor laws.

Topic 2: Minimum wage. The video tells employers when employees must be paid at least the federal minimum wage rate (\$7.25) and also explains some common violations to avoid.

Topic 3: Deductions. The video explains which types of pay deductions are allowed and which deductions are illegal.

Topic 4: Hours worked. The video explains what counts as work time and shows some common errors in recordkeeping.

Topic 5: Overtime. This video explains when overtime pay is required and how to calculate it.

NJ Paid Sick Leave Law

NJ employers are now required (effective 10/29/2018) to provide employees with one hour of paid sick leave (PSL) for every 30 hours worked, up to 40 hours in a year. NJ is the tenth state to enact PSL requirements. The law preempts existing local PSL ordinances. This means that NJ employers will have to comply with one state law rather than 13 local laws. The state law also prevents additional municipalities from enacting future PSL ordinances. The NJ Department of Labor and Workforce Development will enforce the law.

IRS Encourages Paycheck Checkup

Employers should encourage more employees to use the new IRS withholding calculator, www.irs.gov/w4app, to make sure their federal income tax withholding is in line with the changes made by Public Law 115-97, known as the Tax Cuts and Jobs Act (TCJA), the IRS said.

The IRS is encouraging employers to inform seasonal and part-year employees, two-income families and people with multiple jobs and employees who itemize their deductions that they might need to revise their W-4 Forms.

Personal Conveyance

Personal Conveyance is where a commercial truck or bus driver can operate the vehicle while off duty and isn't subject to on-duty hours restrictions. This has also been a focal point of confusion regarding the federal Hours of Service (HOS) rules since the onset of ELD's, which require that all movement of a CMV be precisely accounted. It is a good idea to review the FMCSA new guidelines on Personal Conveyance. A brief summary of the 10 key points are listed below.

1. Not a requirement; it is up to the motor carrier whether to allow personal conveyance of the CMV.
2. If the motor carrier does allow personal conveyance, there are no limits that must be placed on it.
3. Motor carriers should be clear with drivers on their personal conveyance policies.
4. The driver must be off duty for it to be personal conveyance.
5. The purpose of a personal conveyance move has to be, after all, personal and not driving or otherwise work related. For example, eating, rest, personal errands, etc.
6. The CMV can be loaded or empty during personal conveyance.
7. Personal conveyance does not affect the driver's on-duty time.
8. A move when the driver is parked and off duty can be personal conveyance.
9. The driver does not have to return to the last on-duty location after personal conveyance.
10. A commute with the truck to and from the terminal or similar location, if allowed by the motor carrier/employer, can be personal conveyance.

2019 Minimum Wage Increases

The following states have increased their minimum wage effective 1/1/2019:

Alaska	\$9.89	Arizona	\$11.00
California	\$12.00	Colorado	\$11.10
Florida	\$8.46	Maine	\$11.00
Massachusetts	\$12.00	Michigan	\$10.00
Minnesota	\$9.86	Missouri	\$8.60
Montana	\$8.50	New Jersey	\$8.85
New York	\$11.10	Ohio	\$8.55
Rhode Island	\$10.50	South Dakota	\$9.10
Washington	\$12.00	Vermont	\$10.78

If you need updated compliance posters, please contact Diane Hofstadter at 763-585-7073 or dhofstadter@tlccompanies.com.

Behind the Scenes @ TLC

2018 W-2s

To prevent delays in 2018 W-2s, please remind your employees to verify their mailing address on their checks or check stubs. Call the payroll office at 877-815-4852 if any changes are needed.

TLC Application Link

Did you know you can have TLC's online driver application linked to your company's webpage? Your applicants can click a link on your webpage that will bring them directly to TLC's online application. Contact Stacey Gibson at 800-926-8440 x4033 for more information.

New TLCHRConnect®

TLC Companies has launched our new and improved TLCHRConnect web site which is designed to be mobile-friendly and work on all devices. Our new online application is simplified and easier. We are still in transition and will be integrating all sections of the web site over the course of the year. Look for enhanced reporting capabilities as we fully migrate to our mobile platform.

Open Road Driver Plan

The driving record is the most valuable asset to professional drivers and trucking companies. Traffic tickets, violations and warnings not only affect the drivers' record, but the companies' SMS scores as well.

The Open Road Drivers Plan is a voluntary benefit that provides local, licensed attorney representation for the driver. Membership benefits extend to a spouse. It also provides discounts for prescription drugs, tax preparation services, car rentals and hotel accommodations, among many other benefits. For a brochure on the benefit and cost, please contact a TLC Safety Professional or TLC Benefits.

Ninety percent of the cases are either won or the fine reduced. Adjudicated violations can be removed from the company and driver's SMS record using DataQ.