March 26, 2020

TRACKING IMPACTS OF COVID-19 TO THE CONSTRUCTION INDUSTRY – UPDATE #2

CWCC organizations and their members are experiencing unprecedented conditions and challenges related to continuity of operations in light of the coronavirus (COVID-19) outbreak. We recognize every State is addressing this matter differently. This update focuses on federal response and some materials from UTCA-NJ that may be helpful.

3rd EMERGENCY BILL CLEARS SENATE – HOUSE ACTION EXPECTED TODAY

As you likely aware, Congress is working to pass a 3rd emergency bill. H.R. 748, the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act) - phase 3 of the economic stimulus legislative initiatives. The bill passed the Senate by a vote of 96-0 and is expected to pass the House tomorrow, Friday, March 27. The bill is 1151 pages long and is being reviewed. That review will be shared as soon as it’s available. If you are going to start your own review, Sante Esposito recommends that you start by focusing on the table of contents. That, in and of itself, provides a good feel for the issues included. He also suggests that you might want to share the text with your finance/accounting and human resources people so that they could focus on the employer and employee sections. Over the next few days we expect that there will be much explanatory material produced by various sources on the legislation. Sante is staying on top of this and the CWCC will distribute these resources available to you as soon as possible.

Preliminary categories of spending / programs include:

1. Extend unemployment insurance by 13 weeks and include 4 months of benefits
2. Allow workers to maintain their salaries if forced out of work as a result of the pandemic
3. $55B more than what was in the Republican proposal for hospitals
4. $150B more than what was in the Republican proposal for states, localities, and tribes
5. $10B in SBA grants of up to $10,000 for small business costs
6. $17B for SBA to cover 6 months of payments for businesses with current SBA loans
7. $25B for transit funding
8. $30B for the Disaster Relief Fund
9. Ban on stock buybacks for companies that receive government assistance
10. Real time reporting of Treasury loans, assistance and investments
11. An inspector general for the $500B to lend to corporations
12. Tax credit to encourage employers to keep workers on the payroll
13. Tax exclusion for people who are receiving student loan repayment from their employer
14. Prohibit businesses controlled by the President, VP, Members of Congress and heads of Executive Departments from receiving loans or investments from Treasury programs
15. Above prohibition also includes their children, spouses and in-laws
This is preliminary information, more verified details to follow as soon as they are available.

**U.S. DOL GUIDANCE FORTHCOMING – MODEL EMPLOYEE POSTER NOW AVAILABLE**

All CWCC Members should be on the lookout for a Guidance document from the U.S. DOL regarding clarifications/questions that the construction industry has raised related to the Family First Coronavirus Response Act. We will send that out to the CWCC as soon as it becomes available.

U.S. DOL just released the official model notice poster notifying employees of their rights under the (FFCRA). All employers covered by the FFCRA are required to give employees notice. This **poster will satisfy the FFCRA notice requirements**.

Here is a link for the poster:


**FMCSA – WAIVER FOR CDL RELIEF**

Our national transportation partner ARTBA has notified us that the FMCSA has granted some limited relief in the area of CDLs. The attached waiver and enforcement order were issued by the agency last night. The waiver is **valid through June 30, 2020** and **suspends CDL renewals** and **renewals of tests** and **medical certifications** associated with CDL renewals.

**VIRTUAL CWCC FLY IN DETAILS**

The organizers of Water Week have cancelled the in-person meetings and will holding “virtual” events. CWCC is in communication with our national partners and will be announcing plans soon for CWCC to have access to those virtual events and materials. We will also be announcing our plans for the remote CWCC Business Meeting next week. On the same schedule, we will be distributing drafts of our CWCC advocacy materials and asking for feedback before making those materials final.
UTCA NJ PREPARES LEGAL MEMO AND TEMPLATE LETTER FOR EMPLOYERS EXEMPT FROM SOCIAL DISTANCING PROVISIONS IN NEW JERSEY

We thought it may be helpful to share UTCA NJ’s newly crafted section of our website dedicated to COVID-19 matters:

https://www.utcanj.org/covid-19-information/

Although specific to New Jersey’s Executive Actions, on this website you will find an assessment from our general counsel of impact of recent Executive Actions related to social distancing / essential activities and their impact to the construction industry in New Jersey. From that, we crafted a template letter that our members could use in the field if they are questioned for being on the road or at a job site. We thought sharing this may be helpful in the event others are experience the same challenges in the field.

OPEN INVITATION FOR DIALOGUE

We invite any CWCC Member to “reply all” to this message and advise:

- **Any issues not addressed in the 3rd Federal Response Bill that needs to be put on the table for future legislation?**

- **How are you experiencing the Covid-19 situation?** How has it changed the way you and your organization are going about your work? What challenges are you having that peers in the CWCC may be able to help problem solve? What questions do you have for each other?

- **How is your trade association responding?** How are your states and communities responding and what might we do together to educate the public and policy makers?
The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

PAID LEAVE ENTITLEMENTS
Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee’s two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to $511 daily and $5,110 total;
- 2/3 for qualifying reasons #4 and 6 below, up to $200 daily and $2,000 total; and
- Up to 10 weeks more of paid sick leave and expanded family and medical leave paid at 2/3 for qualifying reason #5 below for up to $200 daily and $12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

ELIGIBLE EMPLOYEES
In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19
An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

| 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; | 5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or |
| 2. has been advised by a health care provider to self-quarantine related to COVID-19; | 6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
| 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis; | |
| 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | |

ENFORCEMENT
The U.S. Department of Labor’s Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.

For additional information or to file a complaint:

1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd
NOTICE OF ENFORCEMENT POLICY REGARDING EXPIRING DRIVER’S LICENSES AND MEDICAL EXAMINER’S CERTIFICATES DURING COVID-19 NATIONAL EMERGENCY

The President has declared a national emergency under 42 U.S.C. § 5191(b) related to Coronavirus Disease 2019 (COVID-19). This Notice is in response to COVID-19 outbreaks and their effects on people and the immediate risk they present to public health, safety, and welfare in the fifty States and the District of Columbia. Many States are experiencing greater than normal employee absences or have closed offices of their State Driver Licensing Agencies in response to the guidance from the U.S. Center for Disease Control to use social distancing to reduce the spread of COVID-19. Because of these actions, many commercial motor vehicle (CMV) drivers are unable to renew their driver’s license and are unable to provide medical certificates to their State Driver Licensing Agencies.

In addition, many medical providers nationwide have canceled regularly scheduled appointments to dedicate resources to the COVID-19 response or for related reasons, and drivers are unable to obtain appointments for physical examinations with medical examiners to comply with the Federal Motor Carrier Safety Regulations (FMCSRs). Given the national emergency, there is a public need for immediate transportation of essential supplies, equipment, and persons, which requires an adequate and sustained supply of CMV drivers including Commercial Learner’s Permit (CLP) holders, Commercial Driver’s License (CDL) holders, and non-CDL commercial drivers. Ensuring that drivers are available to operate CMVs during the national emergency declaration is critical to continued operation of the transportation and energy supply networks and the safety and economic stability of our Nation.

This Notice of Enforcement Policy, effective from March 24, 2020 to June 30, 2020, provides needed relief from specified FMCSRs for CLP holders, CDL holders, and non-CDL drivers and motor carriers using those drivers. This Notice of Enforcement Policy applies to all CLP holders, CDL holders, and non-CDL drivers whose license was issued for less than the maximum period established by 49 CFR 383.25 and 383.73 and was valid on February 29, 2020 and expired on or after March 1, 2020.

FMCSA will exercise its enforcement discretion to not take enforcement action for the following:

1. 49 CFR 383.23(a)(2) – a CLP or CDL holder operating a CMV with an expired license, but only if the CLP or CDL was valid on February 29, 2020, and expired on or after March 1, 2020.

2. 49 CFR 383.37(a) – a motor carrier that allows a CLP or CDL driver to operate a CMV during a period in which the driver does not have a current CLP or CDL, but only if the CLP or CDL was valid on February 29, 2020, and expired on or after March 1, 2020.
3. 49 CFR 391.11(b)(5) – a CMV driver (i.e., CLP, CDL, or non-CDL license holder) or motor carrier that allows a CMV driver to operate a CMV during a period in which the driver’s operator license has expired, but only if the driver’s license was valid on February 29, 2020, and expired on or after March 1, 2020, and the driver is otherwise qualified to drive under 391.11.

4. 49 CFR 391.45(b) – a CMV driver or motor carrier that allows a CMV driver to operate a CMV during a period in which the driver does not have the current medical certificate as required by 49 CFR 391.45(b), but only if the driver has evidence of a medical certification that was valid on February 29, 2020 and expired on or after March 1, 2020.

All CLP and CDL drivers are required to comply with all other applicable obligations under the FMCSRs and other applicable laws.

This Notice creates no individual rights of action and establishes no precedent for future determinations.

This Notice is effective from March 24, 2020, through June 30, 2020.

Issued: March 24, 2020

Joseph P. DeLorenzo
Acting Associate Administrator for Enforcement
Waiver in Response to the COVID-19 Emergency –
For States, CDL Holders, CLP Holders, and Interstate Drivers Operating
Commercial Motor Vehicles

March 24, 2020

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Grant of waiver.

SUMMARY: FMCSA grants, until June 30, 2020, a waiver from certain regulations applicable
to interstate and intrastate commercial driver’s license (CDL) and commercial learner’s permit
(CLP) holders and to other interstate drivers operating commercial motor vehicles (CMVs). The
Agency has initiated this action in response to the President’s declaration of a national
emergency under 42 U.S.C. § 5191(b) related to Coronavirus Disease 2019 (COVID-19).

DATES: This waiver is effective March 20, 2020 and expires on June 30, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Nikki McDavid, Chief of the
Commercial Driver’s License Division, Office of Safety Programs, 202-366-0831, Federal
Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590-
0001.

Legal Basis
107, June 9, 1998) provides the Secretary of Transportation (the Secretary) authority to grant
waivers from any of the Federal Motor Carrier Safety Regulations issued under Chapter 313 of
Title 49 of the United States Code or 49 U.S.C. § 31136, to a person(s) seeking regulatory relief
(49 U.S.C. §§ 31136(e), 31315(a)). The Secretary must make a determination that the waiver is
in the public interest and that it is likely to achieve a level of safety that is equivalent to, or
greater than, the level of safety that would be obtained in the absence of the waiver. Individual
waivers may be granted only for a specific unique event for a period up to three months. TEA-21
authorizes the Secretary to grant waivers without requesting public comment, and without
providing public notice.

The Administrator of FMCSA has been delegated authority under 49 CFR 1.87(e) and (f) to
carry out the functions vested in the Secretary by 49 U.S.C. chapter 313, relating to commercial
motor vehicle operators, and 49 U.S.C. chapter 311, subchapter I and III, relating to commercial
motor vehicle programs and safety regulations.

Background
The President has declared a national emergency under 42 U.S.C. § 5191(b) related to
Coronavirus Disease 2019 (COVID-19). This waiver is in response to COVID-19 outbreaks and
their effects on people and the immediate risk they present to public health, safety, and welfare in
the fifty States and the District of Columbia. Several States are experiencing greater than normal
employee absences or have closed offices of their State Driver Licensing Agencies in response to
the guidance from the U.S. Center for Disease Control to use social distancing to reduce the
spread of COVID-19. As a result, many CDL and CLP holders are unable to renew their CDLs
and CLPs and are unable to provide medical certificates to their State Driver Licensing
Agnecies. In addition, many medical providers nationwide have canceled regularly scheduled
appointments to dedicate resources to the COVID-19 response. As a result, drivers are unable to
obtain appointments for physical examinations with medical examiners to comply with the
Federal Motor Carrier Safety Regulations (FMCSRs). Given the national emergency, there is a
public need for immediate transportation of essential supplies, equipment, and persons, which
requires an adequate and sustained supply of CDL holders, CLP holders, and drivers operating
CMVs (non-CDL drivers). This waiver provides needed relief from specified FMCSRs for CDL
holders, CLP holders, and non-CDL drivers.

FMCSA’s Determination and Regulatory Provisions Waived
Consistent with the statutory requirements for waivers, FMCSA has determined that it is in the
public interest to issue a waiver, limited in scope and circumstances, that is likely to achieve a
level of safety that is equivalent to, or greater than, the level of safety that would be obtained in
the absence of the waiver until June 30, 2020.

To respond to this unique event and to continue the ability of intrastate and interstate CDL and
CLP holders and interstate non-CDL drivers to transport goods in response to the COVID-19
emergency, this waiver:

- Extends until June 30, 2020 the maximum period of CDL validity by waiving 49 CFR
  383.73(b)(9) and 383.73(d)(6) for CDLs due for renewal on or after March 1, 2020.

- Extends until June 30, 2020 the maximum period of CLP validity by waiving 49 CFR
  383.73(a)(2)(iii) and 383.25(c) for CLPs that are due for renewal on or after March 1,
  2020, without requiring the CLP holders to retake the general and endorsement
  knowledge tests.

- Waives the requirement under 49 CFR 383.25(e) that CLP holders wait 14 days to take
  the CDL skills test.

- Waives the requirement under 49 CFR 391.45 that CDL holders, CLP holders, and non-
  CDL drivers have a medical examination and certification, provided that they have proof
  of a valid medical certification that was issued for a period of 90 days or longer and that
  expired on or after March 1, 2020. e.

- Waives the requirement under 49 CFR 383.71(h)(3) that, in order to maintain the medical
certification status of “certified,” CDL or CLP holders provide the State Driver Licensing
Agency with an original or copy of a subsequently issued medical examiner’s certificate,
provided that they have proof of a valid medical certification that expired on or after
March 1, 2020.

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• Waives the requirement under 49 CFR 383.73(o)(2) that the State Driver Licensing Agency change the CDL or CLP holder’s medical certification status to “not certified” upon the expiration of the medical examiner’s certificate or medical variance, provided that the CDL or CLP holders have proof of a valid medical certification that expired on or after March 1, 2020.

• Waives the requirements under 49 CFR 383.73(o)(4) that the State Driver Licensing Agency initiate a CDL or CLP downgrade upon the expiration of the medical examiner’s certificate or medical variance, provided that the CDL or CLP holders have proof of a valid medical certification or medical variance that expired on or after March 1, 2020.

• In accordance with 49 CFR 383.23(a)(1) and 391.41(a)(1)(i), FMCSA continues to recognize the validity of commercial driver’s licenses issued by Canadian Provinces and Territories and Licencias Federales de Conductor issued by the United Mexican States, in accordance with 49 CFR part 383, when such jurisdictions issue a similar notice or declaration extending the validity date of the medical examination and certification and/or validity of the corresponding commercial driver’s license due to interruption to government service resulting from COVID-19.

States, CDL holders, CLP holders, and interstate non-CDL CMV drivers are covered under this waiver without further action.

FMCSA will not issue a finding of noncompliance under 49 CFR part 384 against States for action or inaction consistent with this waiver.

FMCSA’s legal authorities extend to waiver of the maximum period under the FMCSRs for State issuance of CDLs (8-years). While many States have adopted the maximum 8-year renewal period, other States have adopted shorter periods, and waiving the 8-year limit would provide no relief to drivers with CDLs issued by those States. In the interest of effectively providing automatic CDL renewal relief for as many drivers with recently expired CDLs as possible, FMCSA is therefore issuing a separate Notice of Enforcement Policy stating that, through June 30, 2020, the Agency will not take enforcement against drivers for operation of a CMV if the driver held a valid CDL on February 29, 2020, or against motor carriers for use of such a driver. Most States have adopted the full 1-year maximum period of CLP validity, but FMCSA is similarly including its Enforcement Policy a comparable provision on non-enforcement of recently expired CLPs.

Public Interest

FMCSA finds that the granting of this waiver is in the public interest, given interstate and intrastate CDL and CLP holders’ and interstate non-CDL drivers’ critical role in delivering necessary property and passengers, including, but not limited to, shipments of essential supplies and persons to respond to the COVID-19 outbreaks. This waiver is in the public interest because it would allow drivers covered under this waiver to deliver essential supplies and persons across State lines to address the national emergency. This waiver will also reduce the administrative burden on State Driver Licensing Agencies and CDL, CLP, and interstate non-CDL drivers during this national emergency.
Safety Equivalence  Due to the limited scope of this waiver, the short duration, and the ample precautions that remain in place, FMCSA has determined that the waiver is likely to achieve a level of safety that is equivalent to the level of safety that would be obtained absent the waiver.

The waiver of a particular regulation should not be looked at in isolation but rather as part of the whole of all regulations governing the safety of drivers. Waiver determinations are made holistically, taking all relevant factors into account. See International Bhd of Teamsters v. DOT, 724 F.3d 206 (D.C. Cir. 2013). Notably, although the maximum period of time for CDL and CLP expiration is set by regulation, it is not one of the core of regulations that FMCSA evaluates to determine whether a State program is in “substantial compliance.” See 49 CFR 384.301. This waiver also enhances safety by not requiring or incentivizing State offices to remain open during the pandemic and CDC recommendations to social distance.

The waiver does not alter any of the knowledge and skills testing requirements for obtaining either a CDL, a CLP, or a necessary endorsement. It does not allow CDL or CLP holders to extend their licenses if they expired prior to March 1, 2020. It does not apply to a CDL or CLP holder if the driver’s privileges have been suspended or withdrawn for traffic offenses. This waiver does not cover CDL holders, CLP holders, or non-CDL drivers whose medical certifications expired prior to March 1, 2020.

In this case, FMCSA believes that the measures listed below under Terms, Conditions, and Restrictions of the Waiver, including proof of a recently expired valid CDL, CLP or medical certificate, the inapplicability of the waiver to expired medical certificates issued for less than 90 days, and the requirement to notify FMCSA in the event of accidents involving drivers operating under the waiver, taken collectively, provide the assurance needed to meet the legal standard that granting the waiver is likely to achieve an “equivalent level of safety.”

As such, FMCSA has determined that a waiver from the regulations noted above during the period of the waiver will achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver.

Unique Circumstances
COVID-19 outbreaks have led to widespread closures of State and Federal government offices, reduction of government and medical services, and disruption of transportation systems, including driver shortages and related interruption of supply chains, which are heavily dependent on continued CMV operations. FMCSA finds that the circumstances surrounding this waiver are unique because such government and medical operations are not providing their usual level of service.

For the reasons above, FMCSA grants, until June 30, 2020, a waiver as provided above, subject to the terms and conditions below.

Terms, Conditions, and Restrictions of the Waiver
This waiver covers States, CDL holders, CLP holders and interstate non-CDL CMV drivers for the period beginning at 12:01 a.m. (ET) on March 20, 2020, continuing through 11:59 p.m. on June 30, 2020.
(1) This waiver does not apply to a CDL or CLP holder if the driver’s license expired before March 1, 2020.

(2) This waiver does not apply to a CDL or CLP holder if the driver’s privileges have been suspended or withdrawn for traffic offenses.

(3) Drivers claiming relief under this waiver from the requirement for a valid medical certificate must have proof of a valid medical certificate that expired on or after March 1, 2020, and carry a paper copy of their expired medical certificates.

(4) Drivers who cannot produce evidence of a prior medical certification that expired on or after March 1, 2020, are not covered under this waiver, including new drivers who have never obtained a medical certification.

(5) Drivers who, since their last medical certificate was issued, have been diagnosed with a medical condition that would disqualify the driver from operating in interstate commerce, or who, since their last medical certificate was issued, have developed a condition that requires an exemption or Skill Performance Evaluation from FMCSA are not covered under this waiver.

(6) This waiver does not apply to medical examiner’s certificates originally issued for less than 90 days.

(7) Notification to FMCSA of Accidents. Each motor carrier must notify FMCSA within 5 business days of an accident (as defined in 49 CFR 390.5), involving any CDL holder, CLP holder, or non-CDL driver operating under the terms of this waiver. See 49 CFR 390.15(b) (requiring maintenance of accident registry.) Notification shall be by email to MCPSD@DOT.GOV. The notification must include the following information:

i. Date of the accident;
ii. City or town, and State in which the accident occurred, or closest to the accident scene;
iii. Driver's name and license number;
iv. Vehicle number and State license number;
v. Number of individuals suffering physical injury;
vi. Number of fatalities;
vii. The police-reported cause of the accident (if available at time of the report); and
viii. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations.

(8) FMCSA reserves the right to revoke this waiver for drivers’ involvement in accidents, motor carriers’ failure to report accidents, and drivers’ failure to comply with the restrictions of this waiver.

Jim Mullen
Acting Administrator