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Transportation Attorney Larry Hall Quoted Extensively in Bloomberg BNA Article

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Concerning the Recent Eighth Circuit Decision on Testing Obese Drivers for Sleep Apnea

Could Testing Obese Truckers Weigh Down Industry?

By Patrick Dorrian

Trucking companies that aren't yet testing their oversized drivers for sleep apnea may want to start doing so for safety and legal compliance purposes.

That is the upshot of a recent federal appeals court ruling and a potential Department of Transportation regulation, Lawrence S. Hall, who represents trucking and transportation companies, said. The appeals court's ruling also reaches many FedEx, UPS, and public and private bus drivers, Hall told Bloomberg BNA.

But who pays for the testing and any necessary treatment when it is not covered by insurance? How can such testing be implemented without violating drivers' rights against disability and weight discrimination? The issue presents tricky questions that the industry as a whole, as well as its individual members, may be forced to address.

Some tests for detecting sleep apnea are expensive, James Zervios of the Obesity Action Coalition told Bloomberg BNA.

Cost also is a factor in treating a driver for the condition after it has been diagnosed, Zervios added. He is the Tampa, Fla.-based advocacy group's vice president of marketing and communications.

Sleep apnea can cause daytime sleepiness and thus affect driver and public safety. Driving with undiagnosed or untreated sleep apnea presents a safety hazard, “so it’s common sense to address the issue,” he said. On the other hand, it presents a difficult situation “when employees are made to bear the expense” of testing and treatment, Zervios said Oct. 18.

But cost is a two-way street, at least for small and mid-size carriers, Hall said Oct. 17. He’s with Sandberg Phoenix & von Gontard P.C. in St. Louis.

The size of a company’s operation is central to how a carrier may be able to handle the issue. “There’s no one-size-fits-all approach” for addressing sleep apnea testing in the industry, Hall said.

That’s what makes the rule currently being considered by the DOT’s Federal Motor Carrier Safety Administration so important, he added.

If the FMCSA were to mandate sleep apnea testing industrywide and require carriers to pay for it, regardless of the size of their operations, “that could be an incredible blow financially” to smaller carriers, Hall said.

The agency issued an advance notice of proposed rulemaking, or request for public comments, on sleep apnea testing for commercial motor vehicle (CMV) carriers and drivers March 10. And on Oct. 24 the agency’s safety advisory committee and medical review board will hold a public meeting in Washington to address the issue.

“Companies need to be thinking about how they’re going to deal with” the testing of overweight drivers and whether, as a group, “they should be doing more now,” Hall said.

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