

BUSINESS & LEGISLATION | Driver Hours



Richard Wadkin and Clare Benger from corporate law firm Shulmans LLP talk about some of the legal ramifications surrounding the new fixed penalty laws involving driver hours.



FINES FOR COMMERCIAL DRIVERS – DO NOT TAKE THE PATH OF LEAST RESISTANCE

Are you inclined to accept the decisions of people in authority? Think again!

As new fixed penalty laws come into force, it may be a case of 'act in haste, repent at leisure' for many drivers who are stopped on the roadside. Since March 5th 2018, the Driver and Vehicle Standards Agency (DVSA) is permitted to fine drivers on the spot for any drivers' hours offences that have been committed in the 28 days preceding the stop.

The DVSA's traffic examiners' powers have been widened. They are able to issue fixed penalty notices for up to five drivers' hours offences in a single roadside check. As each fine is for a fixed sum of between £50 and £300, a single stop which identifies five offences at the highest level will result in a driver being fined £1,500.

Implications for a driver

Drivers should be aware that they will have 28 days to decide whether to accept the fixed penalty or not. If they do, then that is it – there is no appeal or further action to be taken, but the penalty is recorded against them.

If they do not agree with the assessment that an offence has been committed, or they are unsure and want to consider the issues further, they should decline the offer of a fixed penalty. This may result in a summons to court where reasons for the contravention and arguments for a lower penalty can be put forward. If the driver is found guilty, or pleads guilty, the fine and

the costs are likely to be greater than the initial fixed penalty.

Fixed penalties count in the same way as convictions before a court. If a driver is convicted of drivers' hours offences, they could be called before the Traffic Commissioner for a hearing to consider whether any action should be taken against the driver's vocational driver's licence. This could clearly have significant financial implications on an individual who is prevented from working as a driver during a period of suspension.

The guidance provided by the Senior Traffic Commissioner indicates that a driver convicted of drivers' hours offences might expect to receive a suspension of their licence, ranging from a few days to a few weeks depending on the Traffic Commissioner's view of the significance or severity of the offences.



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Implications for an operator and transport manager

Both the operator and transport manager are obliged to notify the Traffic Commissioner of any offences committed by drivers, including any fixed penalties.

An operator that engages a driver who commits drivers' hours offences needs to recognise that this can lead to the operator being called to a public inquiry which will consider any action to be taken against the operator's licence. In such circumstances it is likely that the operator will have to explain how its systems failed to prevent the offences. If the fixed penalties have just been accepted, there will be limited opportunity to discuss and consider defences and mitigation in relation to the issues concerned.

Traffic Commissioners are equally keen to ensure that a transport manager demonstrates continuous and effective control over the transport aspects of an operator's activities. Failures by drivers (such as by breaching drivers' hours rules) will reflect on the competence of a transport manager. Since a transport manager can also be called to a public

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inquiry to explain apparent failures in the carrying out of their responsibilities, they also need to recognise the implications for them of the actions of drivers in relation to any adverse check which might occur.

What should drivers, operators and transport managers do?

Operators, drivers and transport managers need to be aware of these new rules and ensure that if a roadside check

involves a driver being offered a fixed penalty then this should not be accepted lightly or as just an easy way out.

At the very least operators and transport managers should require their drivers to make them immediately aware if a fixed penalty notice has been issued, and stress that they need to be notified by drivers BEFORE it is accepted. The driver's own licence, the transport manager's reputation and the operator's licence may be affected by any fixed penalty. As a result, there can be serious implications for an operator's business and further cost in dealing with any fall out.

Clearly it is best to prevent such an issue arising in the first place but, if it does, those involved should know how to manage such an eventuality.

For further information, search for 'Drivers' hours: rules and guidance' at www.gov.uk, or visit www.shulmans.co.uk