

Heavy vehicle driver fatigue laws: Overview

FACT SHEET 1



Introduction

New fatigue laws, implemented in September 2008, set revised work and rest limits for heavy vehicle drivers and require better management of driver fatigue.

The laws apply to both trucks and buses. They apply to a truck with a gross vehicle mass (GVM) of over 12 tonnes or a combination, if the total of the GVM is over 12 tonnes. They also apply to a bus with more than 12 seats, including the driver. The laws do not cover plant equipment (machines or implements) or a motor home.

What are the major changes?

The reform changes the focus from regulating hours to managing fatigue. Working long hours and fighting your body clock at night is widely recognised as high risk.

Operators and drivers who 'do the right thing' by managing those risks through accreditation schemes will have a greater say in when they can work and rest.

Current productivity levels can be maintained simply by planning trips and rest breaks, checking records, and training staff to understand the causes of driver fatigue.

The three scheme options are:

- Standard Hours ('default' 12 working hours a day)
- Basic Fatigue Management (up to 14 hour work with accreditation)
- Advanced Fatigue Management (accredited risk management approach)

The Standard Hours option will suit most businesses as it sets default limits for work and rest. If you need more flexible hours, you can consider applying for Basic Fatigue Management (BFM) or Advanced Fatigue Management (AFM). For more information about the various schemes, see VicRoads Fact Sheet 2, 'Which driving hours option suits you?'

Who is responsible?

Drivers and operators have traditionally been the focus of road laws. However, breaches are often caused by the actions of others. The new Heavy Vehicle Driver Fatigue reform requires all parties in the supply chain to manage the causes of heavy vehicle driver fatigue.

Under these new laws, everyone in the supply chain, not just the driver, will have responsibilities to prevent driver fatigue and ensure drivers are able to comply with the legal work/rest hours. If your actions, inactions or demands cause or contribute to road safety breaches then you can be held legally accountable. Authorities can investigate along the supply chain, and up and down the corporate chain of command. The days of 'all care and no responsibility' are over.



Who are the parties in the chain?

In addition to the driver, the parties in the 'Chain of Responsibility' (CoR) are:

- the employer of a driver;
- the prime contractor of a driver;
- the operator of a vehicle;
- the scheduler of goods or passengers for transport by the vehicle and also the scheduler of its driver;
- both the consignor and consignee of the goods transported by the vehicle;
- the loading manager, ie the person who supervises loading or unloading or manages premises where regular loading or unloading occurs; and
- the loader and unloader of the goods carried by the vehicle.

The responsibilities relate to the work undertaken, not the title of the position. For example, a person may be an employer, and operator and a consignor at the same time.

Taking reasonable steps

Under the new laws, everyone in the supply chain must take 'reasonable steps' to prevent driver fatigue and ensure a driver does not drive a heavy vehicle while impaired by fatigue – an approach consistent with existing Occupational Health & Safety (OH&S) laws.

Employers and customers will be held accountable for dangerous work schedules and long truck queues, which are known to be major causes of fatigue. If poor business practices endanger the lives of other road users, there will be severe penalties for those responsible.

Penalties escalate sharply for offences which pose a serious road safety risk; including court-imposed fines in excess of \$50,000 and can include demerit points for driver related offences.

Pointing the finger at someone else who has broken the law does not automatically mean you are no longer responsible. In some circumstances, you may also have multiple duties under the Chain of Responsibility and are therefore also liable.

To comply with the law, you should ensure that you can demonstrate reasonable steps are taken to prevent a breach from occurring in your workplace or as a result of your activities. There are no limits to the ways in which you can do this. What constitutes reasonable steps will vary according to each individual's circumstances. You may need to change the way you do business on a daily basis.

Taking reasonable steps could include:

- developing an industry code of practice;
- use of accreditation schemes;
- reviewing your business practices;
- changing your commercial arrangements; and
- adopting a risk management approach.

If you exercise control or influence over the transport task in your workplace you can be held legally liable for your actions, inactions or demands if they have caused or contributed to a road safety breach. The law requires you to take reasonable steps to prevent your conduct from causing or contributing to a breach. In addition, the law also prohibits you from:

- making demands that you know or ought to know would cause a breach;
- entering into contracts that you know or ought to know would cause, encourage or give an incentive for a breach;
- coercing, inducing or encouraging breaches; and
- passing on false or misleading information that could cause a breach.

Reasonable Steps: things to consider

There are no limits on the ways in which a person can show that they took reasonable steps. Consider the following actions:

- identify and assess risks;
- take steps to eliminate, manage or prevent the risk; and
- monitor and review risk management processes.

In determining whether you have taken reasonable steps, courts will typically consider:

- how serious the breach is;
- the abilities, experience, expertise, knowledge, qualifications and training of you and your staff;
- the nature and circumstances of the breach;
- what industry practices are available and in place to deal with breaches of this sort; and
- what measures were available and suitable to take.

Under the new Victorian fatigue laws drivers and operators do not have a reasonable steps defence.

To assist parties in complying with the new laws the National Transport Commission (NTC) has developed *Guidelines for Managing Heavy Vehicle Driver Fatigue*. These guidelines provide guidance for drivers, employers, operators and schedulers, as well as users and customers of road transport on managing heavy vehicle driver fatigue and on the responsibilities of each of these parties under the new laws. The guidelines can be accessed from the NTC website, www.ntc.gov.au

Business practices

You should regularly review your business practices to ensure the steps you are taking are reasonable at all times. Some of the steps you may need to consider include:

- ensuring your work practices do not contribute to or cause on-road breaches;
- training for staff to ensure they understand their obligations under the Chain of Responsibility;
- audits/spot-checks to ensure compliance (eg monitoring of loading);
- reviewing contracts and commercial arrangements to ensure they do not encourage or give an incentive for breaches; and
- contingency plans to manage operational issues within the law.

Risk management

Ensuring your business is taking reasonable steps to prevent breaches requires you to be able to regularly identify and assess the risks involved and to manage them by either eliminating or reducing their effect or the likelihood they will arise. Examples of how to identify and assess risks include:

- reviewing driving or work schedules and work records, including opportunities for rest breaks;
- reviewing loading and unloading times and delays during loading and unloading;
- reviewing contractual arrangements and documents relating to the consignment and delivery of the goods;

- regularly assessing driver fitness for duty;
- analysing injury and accident reports; and
- consulting with drivers, unions and industry associations.

Examples of how to manage a risk include:

- contingency planning in relation to fatigue and work/rest hours;
- allowing for traffic or other delays in scheduling;
- avoiding incentives and demands that might cause or encourage breaches of work/rest hours; and
- a system for giving drivers sufficient notice of scheduled changes.

A number of risk management standards are available that can assist you in developing business practices to minimise the risks of non-compliance in your business. Some of these standards are linked with accreditation schemes; others can be used as tools to help you make your business practices meet your duties under the Chain of Responsibility.

Some helpful risk management standards include The Australian and New Zealand Standard on Risk Management (AS/NZS 4360:1990) (www.standards.org.au) and ISO 9000 quality standards (www.iso9001qualityassurance.com).

Accreditation schemes

Freight customers should ensure their transport operator is accredited to manage fatigue risks where appropriate.

The National Heavy Vehicle Accreditation Scheme (NHVAS) has been developed to offer transport operators a means to demonstrate compliance with the regulations. Heavy vehicle operators must be NHVAS accredited to operate under Basic Fatigue Management and Advanced Fatigue Management work and rest hours (see fact sheets *Basic Fatigue Management explained* and *Advanced Fatigue Management explained*). For more information about NHVAS contact VicRoads.





Industry codes of practice

Companies can also develop and register an Industry Code of Practice and adherence to a Code can be used as supporting evidence of compliance with the laws. An Industry Code of Practice does not automatically discharge liability; it merely establishes a presumption that compliance with the Code is compliance with the duty of care. Guidelines on how to develop an Industry Code of Practice are available from Austroads (www.austroads.com.au).

Commercial arrangements

You can ensure your commercial relationships do not cause your business to breach CoR laws by:

- including compliance assurance conditions (eg safety accreditation) in relevant commercial arrangements with other responsible persons;
- requesting information about what systems and controls are in place to ensure compliance (eg policies on drugs, fatigue management etc); and
- avoiding arrangements which encourage or reward non-compliance.

Corporate and organisational liability

Under the new laws a party (corporation, partnership, unincorporated association or other body corporate) is liable for any offences committed by its employees, directors or officers.

Managerial liability

Where a corporation, partnership or other body corporate commits an offence, anyone who is involved in the management of the organisation may also be personally responsible.

For example, employers will be liable for any offences committed by their employees. Other managerial liability may include:

- directors or managers of the company;
- partners in the partnership; and
- those involved in the management of unincorporated associations.

More information

To assist all parties better understand and meet their obligations under the new laws, VicRoads has produced a series of fact sheets:

- Fact Sheet 2: Which driving hours option suits you?
- Fact Sheet 3: Standard Hours explained
- Fact Sheet 4: Basic Fatigue Management explained
- Fact Sheet 5: Advanced Fatigue Management explained
- Fact Sheet 6: Standard driving hours for the solo bus sector
- Fact Sheet 7: Two-up Driving explained
- Fact Sheet 8: What records you need to keep: A guide for record keepers
- Fact Sheet 9: How to use and complete your new work diary
- Fact Sheet 10: Fatigue information for managers and staff with loading/unloading duties

This fact sheet does not explain all of your obligations under the new laws. For further information on managing driver fatigue contact VicRoads on 1300 360 745 or visit VicRoads website:

www.vicroads.vic.gov.au

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