Detailed Guidance Letter and Tips-Driver Coercion Rule

The firm has received numerous inquiries from motor carrier and intermediary clients regarding the FMCSA's Driver Coercion rule. Among the recurring themes we are seeing are questions regarding what types of conduct might be construed as coercion under the rule. The firm’s detailed guidance letter provides greater clarity in minimizing liability under the rule. Keep in mind, the answer to the driver conduct question will vary depending on whether the entity dealing with the driver conduct issue is an intermediary or a motor carrier because carriers will have more opportunity to impose controls directly on the driver that could be interpreted as coercion. In this regard, it is important for carriers to consider whether standard company policies, such as how dispatch order is determined, might be interpreted as coercion.

Perhaps one of the biggest practical problems created by the rule is how to address objections from drivers that are not in fact good faith safety-based objections. For instance, it is not uncommon for drivers to turn down loads that are viewed as unfavorable. Under the rule, if the driver raises an objection to a load that is arguably safety related, the carrier might have less ability to require (if forced dispatch) or persuade (if not) the driver to accept the load. In those instances, it will be important to determine whether there is a way require the driver to accept the load while avoiding the objection (which might be possible if, for instance, the driver’s objection is based on the possibility of the driver having insufficient hours) versus an objection based on the condition of equipment or the possibility of a overweight load.

Important consideration also needs to be given by carriers ad intermediaries as far as whether to record communications with drivers and, if not, how to train personnel to identify driver objections as well as the steps to take in response to a driver’s objection.
Unfortunately, the rule creates as many questions as answers, especially given how broadly coercion might be construed under the rule. For more information on the detailed guidance letter please contact Allison Smith at asmith@scopelitis.com. For those seeking fact sensitive counsel, please contact Tim Wiseman twiseman@scopelitis.com, Nathaniel Saylor nsaylor@scopelitis.com, or Prasad Sharma psharma@scopelitis.com.