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Global Cold Chain Alliance  
2020 Cold Chain Policy Forum

# EMERGING TRENDS IN TRANSPORTATION POLICY AND LAW

Presented by Shannon M. Cohen

 SCOPELITIS  
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# LEGISLATIVE AND REGULATORY ACTIVITY

# FEDERAL CHANGES

## 4 COVID-19 Laws

- Phase 1: Coronavirus Preparedness and Response Supplemental Appropriations Act
  - March 4, 2020
- Phase 2: Families First Coronavirus Response Act
  - March 18, 2020
- Phase 3: The CARES Act
  - March 27, 2020
- Phase 3.5: The PPP Enhancement Act
  - April 24, 2020

# FEDERAL CHANGES

## Upcoming legislation

- Infrastructure/Highway Bill
  - House-passed INVEST Act
- Increased minimum financial responsibility levels?
- Phase 4 Stimulus
  - Transportation-specific measures?
    - CERTS Act
  - Unemployment changes?
  - Continuation of PUA?

# STATE CHANGES

## Issue to watch

- ABC Legislation
  - Test that makes it more likely that workers will be deemed to be employees instead of ICs
- Additional states considering adoption or expansion of ABC test in the wake of California AB 5
  - Will continue to be a hot button issue
  - New Jersey, New York, Colorado, Illinois, Michigan, Washington

# FEDERAL REGULATORY CHANGES

## HOS Rule Changes

- Published June 1, 2020
- Effective September 29, 2020
- 4 primary changes
  - CMV short-haul exemption
  - Adverse driving conditions
  - 30 minute rest break
  - Split sleeper berth



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# FEDERAL REGULATORY CHANGES

## Other Changes

- Crash Preventability Determination Program
  - Notice of new program published May 6, 2020
- Drug & Alcohol Testing: State Driver Licensing Agency Non-Issuance/Downgrade of CDL
  - NPRM published April 28, 2020
- CDL Knowledge Test/Third Party CDL Testers
- Automated Driving Systems (ADS) rulemaking

# ON THE HORIZON

## Other Changes

- Increased state-level interest for ADS and automated delivery vehicle services
- Continued state-level focus on gig economy/IC drivers
- Paid sick leave
- Portable benefits

# NEW COVID-19 CONSIDERATIONS

# SPECIAL OPERATING CONDITIONS

## Federal and State orders

- FMCSA Waivers, Enforcement Discretion
  - Emergency declaration providing regulatory relief
  - Notice of enforcement discretion
    - Drug testing
    - CDL medical cards
- Patchwork approach is problematic

# BACK TO WORK CHALLENGES

## Implications as businesses return to in-person work

- Virginia Department of Labor regulations
  - More of this?
  - Patchwork approach is problematic
- Impact of “essential worker” designations
  - Advantages of more flexible work conditions
  - Disadvantages relating to WC, sick pay?

# SPECIAL IC CHALLENGES

## Urge to provide relief to ICs may give rise to bad law

- States are grappling with providing relief to “gig workers”
  - Unclear distinction between gig workers, ICs in more established industries
- Pandemic Unemployment Assistance (PUA) possibly helpful to avoid UET claims
  - Delays in implementation probably limit this
- Aggressive positions regarding WC coverage may extend to ICs
- Sick pay efforts

# SPECIAL IC CHALLENGES

## Responding to COVID using ICs may give rise to bad facts

- Increased pressure to show customers responding to crisis
  - Mask, hand sanitizer, PPE requirements = future control?
- Forced to more directly deal with conditions of workplace
  - Social distancing amongst ICs
  - Who may provide service, who cannot
  - Screening for illness



# Questions?

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