



# N E W S L E T T E R

## Training Sessions

*CayCan is offering open courses every month for Federal Hours of Service, National Safety Code Overview and Cargo Securement. You can even register right from our website! Contact us if you want us to come to your area or deliver training in-house.*

<http://www.caycan.ca/training.htm>

## Your Feedback

*Hello to everyone CayCan met at Truxpo in Abbotsford. Be part of the story and let us know what you want to hear about!*

## Lease Operator Liabilities?

### Do you recognize your responsibilities, and liabilities!

It is oh so easy to get comfortable in the way we do things. We find the most *efficient* way to operate our business and run with it. Sometimes we find ways of operating more *efficiently* by selecting our level of compliance.

Many "Carriers" are exposing themselves to liabilities by passing compliance issues off on "Lease Operators" because they think it is an *efficient* way of skirting logistical difficulties. The presumption is that a "Lease Operator" or even in some cases a "Contract Driver" is an independent entity that is responsible for their own actions. The courts are not likely to agree. While the facade of employing a "Lease Operator" as an independent entity may escape scrutiny on a day-to-day basis, the courts would likely look deeper should there be a high profile fatality.

A "Lease Operator" may operate under the "Carriers" licence plates, and therefore their Safety Fitness Certificate. When operating under the "Carriers Safety Fitness Certificate" the "Lease Operator" (and any drivers working for him) is required to submit an application form, work history, abstracts, report convictions & collisions, attend training courses and comply with all the same conditions as a company driver. (see our series of NSC Compliance Newsletters available on our website <http://www.caycan.ca/news.htm>) The vehicle registration would show the "Carrier" as the "Registrant" with the actual owner of the vehicle (the "Lease Operator") appearing in the section for "Leasing Company".

A "Lease Operator" may also have their own Safety Fitness Certificate and operate under the umbrella of the "Carrier". A "Carrier" providing "documents...with respect to the operation of a commercial vehicle...giving directions, directives, instructions or orders respecting the operation of the commercial vehicle." would be exposed to vicarious liability. That is "...where a person other than the carrier responsible for the commercial vehicle carries out a related function in respect of that commercial vehicle .....that person and the carrier are jointly and severally liable for that non-compliance." When utilizing the services of a "Lease Operator", the "Carrier" has an obligation to ensure compliance with the law. At an absolute minimum the "Carrier" must monitor the "Lease Operators" Carrier Profile, Safety Fitness Certificate status,



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# CAYCAN OCTOBER NEWSLETTER

insurance coverage, driver qualifications, Hours of Service, and should include ensuring they have a Safety Program as well as monitoring the Maintenance Program.

A common reason for using a "Lease Operator" includes the perception that the "Carrier" can take advantage of operating some vehicles under a "Provincial" Safety Fitness Certificate and some under a "Federal" Safety Fitness Certificate. The obvious advantage to doing that is having the ability to run one fleet under the Provincial Hours of Service rules and one under the Federal Hours of Service rules. If you are running the same equipment, from the same office, with the same dispatcher and doing the same work for the same clients it is pretty difficult to argue that it is a separate entity! It would be tough to justify that one driver was allowed to abide by a different set of rules than another driver doing the same work. The Courts in the U.S. found a company guilty for not applying the general principals of the Hours of Service regulations to an employee that did not drive a commercial vehicle, but fell asleep while driving home after a long shift. The company required commercial drivers to operate within the legal driving limits and should have been aware that long hours of work would also effect other workers. What do you think your chances are in court if a commercial vehicle operator under your control has an incident? To quote the Federal Hours of Service Regulation: "No motor carrier, shipper, consignee or other person shall request, require or allow a driver to drive and no driver shall drive if

- (a) the driver's faculties are impaired to the point where it is unsafe for the driver to drive;
- (b) driving would jeopardize or be likely to jeopardize the safety or health of the public, the driver or the employees of the motor carrier;
- (c) the driver is the subject of an out-of-service declaration; or
- (d) the driver, in doing so, would not be in compliance with these Regulations.

Whether a Carrier can operate more "efficiently" without increasing their liabilities by delegating liabilities to lease operators should be discussed with a lawyer familiar with transportation legislation and legal precedents.

## Training

**We still have seats available for training next week!**

<b>National Safety Code Overview</b>	<b>October 15</b>
<b>Federal Hours of Service</b>	<b>October 16</b>
<b>Cargo Securement</b>	<b>October 17</b>

**You can register online at <http://www.caycan.ca/training.htm>**

*We will also come to your location! Let us know where you are at and we can try to get a group together to run an "Open" course, or we can put on an in-house course for your employees.*