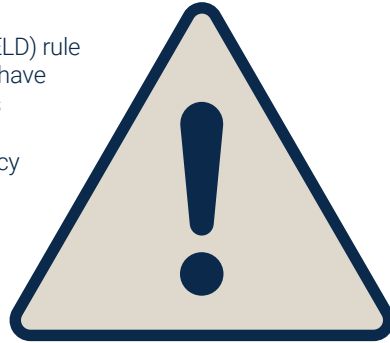


## PART II: DRIVERS' HOURS OF SERVICE: ADDRESS THESE CONTROLLABLE VIOLATIONS

**SINCE THE ADOPTION** of the Electronic Logging Device (ELD) rule in 2017, the dynamics of the hours-of-service (HOS) violations have changed. The ELDs seem to have created a greater awareness among drivers of potential impending violations of the driving hour allowances and has subsequently decreased the frequency of these violations. Yet, carriers are hurting their HOS records with easily controllable violations.

In evaluating the top five record-of-duty status violations in 2022, false reports of the drivers' record of duty status is at the top, followed by no ELD when required.



**IN 2022, VIOLATIONS OF THE REST BREAK, OR THE 11-HOUR AND 14-HOUR RULES, DID NOT EVEN MAKE THE TOP 10 VIOLATIONS OF THE HOURS-OF-SERVICE RULES.**

### FIVE WAYS TO PROTECT YOUR HOS SCORE:



#### 1. False Record of Duty Status

When it comes to false logs, the need to have oversight and conduct internal audits is more important than ever. ELDs are recording all activities of that vehicle, including GPS coordinates and miles traveled. It's very easy for a roadside officer to observe movement when the unit is powered on or off. Roadside officers are trained to look for "jumps" in miles and GPS locations.

Drivers must not be tempted to move the trucks while in a non-driving status – an important audit point for any carrier. Also, review what your driver is doing while indicating sleeper berth or off-duty status. The carrier officials responsible for compliance should be monitoring unassigned miles, fuel purchases, gate receipts, and delivery receipts and comparing times to the record of duty status to ensure time is logged properly. A false record of duty status can lead to out of service violations or, worse, civil liability exposure if involved in a crash.



#### 2. Misuse of Personal Conveyance Time

Improper use of personal conveyance (PC) time has also contributed to these false record of duty status violations. Carriers must have an aggressive oversight of PC use, and the FMCSA recognizes that carriers can control the use by driver. PC is not new, and the change in 2018 modified only a few items, as indicated below:

- The CMV no longer needs to be "unladen," meaning you no longer have to drop a loaded trailer or be sure the box/van truck is empty.
- The driver is now allowed to leave a shipper or receiver off-duty/PC when out of hours to the nearest place of rest.
- The driver can move the CMV at the request of law enforcement and still stay off-duty/PC.
- For the construction industry, employees can use a CMV to travel home from the offsite work location.

Some carriers and drivers feel these allowances are more generous than the rule intended. A carrier must train drivers in PC use if allowed and control it to prevent the false record of duty status violations. PC use is heavily scrutinized by roadside officers and carrier auditors.

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# RISK RESOURCES

## PART II: DRIVERS' HOURS OF SERVICE: ADDRESS THESE CONTROLLABLE VIOLATIONS



### 3. ELD – No Record of Duty Status (ELD Required)

Whether it's a situation where the truck is on a rental agreement more than the 8 days allowed, operating outside a specified exemption, or the device is inoperable with no FMCSA extension allowance, no other exceptions exist for an ELD required unit not to be equipped with the device if the vehicle was manufactured before model year 2000, as reflected in the vehicle identification number as shown on the vehicle's registration.

This violation is observed when renting a non-equipped ELD truck for a period longer than 8 days, or the driver who is normally "exempt" has found themselves subject to a record of duty status for more than 8 days in the 30 consecutive day period. *The best practice is to assume all trucks require an ELD.*

If you find that exception removes the need for you to adhere to the requirements, then be sure the carrier officials responsible for safety understand how the exception applies and what circumstances will void the exemption.



### 4. Record of Duty Status Violation (General Form/Manner)/Not Current

A form and manner violation was a far more common violation in the pre-ELD days, as well as were the violations for not being current. The ELD regulatory section has its own separate sections for similar violations rather than this generic 395.8 section. For those carriers eligible for the ELD exceptions and utilizing paper records, this is an easily observable violation and just as easy for the carrier's safety manager to monitor and correct with regular review of submitted logbooks.



### 5. Sleeper Berth Exception

Another troubling issue that is growing relates to the sleeper berth exception. This exception has been available since the HOS changes in June 2020, but drivers seem to have a growing interest in its use. The allowance is very clear on the rest periods that must be utilized; those include an off-duty period of at least 2 consecutive hours paired with a period of no less than 7 consecutive hours in the sleeper berth. Either way, the total must be at least 10 hours.

Drivers may make errors in the counting process of the rest periods utilized for the 10-hour rest requirement, as the driving time limit and the 14-hour duty-period limit must be re-calculated from the end of the first of the two periods used to satisfy the 10-hour rest period. If this is already confusing to the driver, it's better this allowance is not used until the driver is thoroughly trained or only with the involvement of the carrier safety manager.

Violations have also been observed when the driver attempts to utilize the allowance to get home and has taken the minimum 2 hours off-duty as required, allowing the exclusion of it from 14-Hour Rule consideration, but only if they utilize the sleeper berth before they reach the end of the recalculated time. The driver who reaches his/her home and goes "off duty," rather than sleeper berth, for 7 or more hours will likely be in violation once they come back on duty and drive, as this was an improper use of the sleeper berth provision.

This type of violation is often discovered within the next 7 days of operation as officers review the records for compliance with the 60/70-Hour Rules. Experience has suggested that not every driver should be utilizing this allowance. The carrier's safety managers must be actively involved in authorizing the use of split-berth to ensure compliance.

### SUMMARY

The HOS BASIC has become subject to rapid changes in its status due to fewer violations detected roadside. The violations described above have become more prominent. Even if they do not involve a violation of core driving/duty restrictions, they still can adversely impact carrier CSA scores.

**For a safety manager, you cannot control all the variations of potential violations, but you can certainly control the majority by being familiar with all aspects of Part 395 and having a self-audit process in place to detect problems.** Once those problems are detected, corrective action must be taken so these violations do not adversely affect your HOS BASIC score. In addition, you must also ensure you are conducting proper training and your team knows how these regulations work.