



BENCH CARD: DISQUALIFICATION OF DRIVERS

This Issue Affects All of Us

Commercial traffic operates on Native American reservations. Whether your community has casinos, tour buses, school buses, delivery vehicles, plows, or dump trucks, chances are if you have commerce or civic organizations, you probably have CMVs and commercial drivers.

Table 1 to § 383.51 DISQUALIFICATION FOR MAJOR OFFENSES

If a driver operates any motor vehicle and is convicted of:	First Conviction Operating a CMV	First Conviction Operating non-CMV	First Conviction Operating a CMV transporting Hazardous Materials	Second Conviction Operating a CMV	Second Conviction Operating a non-CMV
Being under the influence of alcohol as prescribed by State law, or being under the influence of a controlled substance OR having an alcohol concentration of 0.04 or greater <i>while operating a CMV</i>	1 Year	1 Year	3 Years	Life	Life
Refusing to take an alcohol test as required under Federal Motor Carrier Safety Regulations (CFR §383.72)	1 Year	1 Year	3 Years	Life	Life
Leaving the scene of an accident	1 Year	1 Year	3 Years	Life	Life
Using the vehicle to commit a felony (**except as described below)	1 Year	1 Year	3 Years	Life	Life
Causing a fatality through the negligent operation of a CMV	1 Year	N/A	3 Years	Life	N/A
Driving a CMV with a suspended, revoked, or cancelled CDL, or while disqualified from operating a CMV	1 Year	N/A	3 Years	Life	N/A
**Using the vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance	<u>Life – Not eligible for 10 year Reinstatement</u>				
**Using a CMV in the commission of a felony involving an act or practice of severe forms of trafficking in persons (22 U.S.C. 7102(11))	<u>Life – Not eligible for 10 -year Reinstatement</u>	N/A	<u>Life – Not eligible for 10 -year Reinstatement</u>	<u>Life – Not eligible for 10 -year Reinstatement</u>	N/A

Many Tribal Law Enforcement Officers are Trained to Identify CMV regulations

Many judges are unsure whether their law enforcement officers are trained in commercial motor vehicle regulations/inspections. ***In fact, a number of tribal police departments, including Umatilla and Hopi list Commercial Vehicle Inspections (CVIs) on their Police Department websites.***

“At most it’s an administrative issue with the department.”

It is illegal for an employer to knowingly authorize a driver who has been disqualified due to a major offense. The conduct of that driver could pose a safety risk to the entire community, or other communities if they move and continue driving somewhere else.

Table 2 to § 383.51 DISQUALIFICATION FOR SERIOUS TRAFFIC VIOLATIONS

For any combination of offenses in this Table in a separate incident within a 3-year period:	Second Conviction (CMV)	Second Conviction (non-CMV*)	Third Conviction (CMV)	Third Conviction (non-CMV*)
Speeding Excessively (≥ 15 mph) over the posted speed limit	60 Days	60 Days	120 Days	120 Days
Reckless driving as defined by local law, including but not limited to wanton disregard for safety of persons or property	60 Days	60 Days	120 Days	120 Days
Making improper or erratic traffic lane changes	60 Days	60 Days	120 Days	120 Days
Following the vehicle ahead too closely	60 Days	60 Days	120 Days	120 Days
Violating state or local laws relating to motor vehicle traffic control (other than parking violations) in connection with a fatal accident	60 Days	60 Days	120 Days	120 Days
Driving a CMV without a CDL	60 Days	N/A	120 Days	N/A
Driving a CMV without a CDL in the driver’s possession	60 Days	N/A	120 Days	N/A
Driving a CMV without the proper class of CDL, or proper cargo/passenger endorsements	60 Days	N/A	120 Days	N/A
Violating state or local law or ordinance regarding texting while driving	60 Days	N/A	120 Days	N/A
Violating a state or local ordinance regarding the use of a hand-held mobile phone while driving a CMV	60 Days	N/A	120 Days	N/A

Knowing All the Facts Makes all the Difference

The majority of participants (44%) in a recent survey commissioned by The National Judicial College, and conducted by the Whitener Group and Data Savvy Consulting, were unsure whether their traffic citations included a spot to designate CDL endorsements. ***Commercially licensed drivers have a higher duty of care, even when they are driving a personal vehicle.***

Comprehensive Laws and Consistent Practice Promote Safety

Enacting comprehensive traffic laws, including those which address CDL/CMV issues, promotes public safety for all persons. The enforcement of comprehensive laws is the ultimate exercise of tribal sovereignty.

Table 3 to § 383.51 DISQUALIFICATION FOR RAILROAD-HIGHWAY GRADE CROSSING OFFENSES

If the driver <i>is convicted of operating a CMV</i> in violation of a Federal, State, or Local law because:	First Conviction (CMV)	Second Conviction *	Third or Subsequent Conviction*
*Any combination of offenses listed in this table in a separate incident within a 3-year period			
The driver is not required to always stop, but fails to slow down and check that tracks are clear of an approaching train or fails to stop before reaching the crossing if the tracks are not clear	No less than 60 Days	No less than 120 Days	No less than 1 Year
The driver is always required to stop, but fails to stop before driving onto the crossing	No less than 60 Days	No less than 120 Days	No less than 1 Year
The driver fails to <ul style="list-style-type: none"> · have sufficient space to drive completely through the crossing without stopping · obey a traffic control device or the directions of an enforcement official at the crossing · negotiate a crossing because of insufficient undercarriage clearance 	No less than 60 Days	No less than 120 Days	No less than 1 Year

Table 4 to § 383.51 DISQUALIFICATION FOR VIOLATING OUT-OF-SERVICE ORDERS

If the driver <i>operates a CMV</i> and is convicted of violating a driver or vehicle out-of-service-order while...	First Conviction (CMV)	Second Conviction *	Third or Subsequent Conviction*
*In a separate incident within a 3-year period			
Transporting nonhazardous materials	Min: 180 days Max: 1 year	Min: 2 years Max: 5 years	Min: 3 years Max: 5 years
Transporting hazardous materials required to be placarded under part 172, subpart F of this title, or while operating a vehicle designed to transport 16 or more passengers including the driver	Min: 180 days Max: 2 years	Min: 3 years Max: 5 years	Min: 3 years Max: 5 years



49 CFR §383.51

1. A person required to have a CLP or CDL who is disqualified must not drive a CMV.
2. An employer must not knowingly allow, require, permit, or authorize a driver who is disqualified to drive a CMV.
3. A holder of a CLP or CDL is subject to disqualification sanctions designated in paragraphs (b) and (c) of this section, if the holder drives a CMV or non-CMV and is convicted of the violations listed in those paragraphs.
4. Determining first and subsequent violations. For purposes of determining first and subsequent violations of the offenses specified in this subpart, each conviction for any offense listed in Tables 1 through 4 to this section resulting from a separate incident, whether committed in a CMV or non-CMV must be counted.
5. The disqualification period must be in addition to any other previous periods of disqualification.
6. Reinstatement after lifetime disqualification. A State may reinstate any driver disqualified for life for offenses described in paragraphs (b)(1) through (8) of this section (Table 1 to §383.51) after 10 years, if that person has voluntarily entered and successfully completed an appropriate rehabilitation program approved by the State. Any person who has been reinstated in accordance with this provision and who is subsequently convicted of a disqualifying offense described in paragraphs b)(1) through (8) of this section (Table 1 to §383.51) must not be reinstated.

The Intersection of Tribal Courts and Commercial Driving

“You want safe drivers, you want people driving safe on your roads.”

Judges told us why they want to learn about CDL/CMV issues...

à To avoid gaps in jurisdiction

à To control the conduct of individuals on our territory

KNOWLEDGE

“I know there’s a lot of rules and regulations, I don’t know any of those. There’s number of miles, hours, like a log they have to keep, and I don’t know anything about that.”

JURISDICTION

84% of participants surveyed want jurisdiction over CDL/CMV cases. But it’s complicated...

“It’s mainly what we talk about. It’s a law school exam every time the cops stop anybody anywhere.”

COOPERATION

“Our police are through the BIA, and they are recognized as [state] licensed officers as well. They’ll write the ticket, [determining] whose jurisdiction essentially it becomes. If it’s a native, very rarely, but more often with the chauffeurs, the human cargo, they’ll come back to our courts.”

