

Policies regarding Multiple Serious Citations for Driver

Information compiled June 6, 2006

The Question: One of our employees recently received a second citation for committing a traffic violation in a transit vehicle. According to DOL, both citations are categorized as being serious in nature and under the CDL rules, the employee's license could be suspended for 60 days. Our question is, how are you handling these situations as it pertains to retaining the employee after the suspension is served? Are you disciplining, or terminating the employee?

Community Transit says... While drivers are disqualified from driving, they could be placed on leave of absence (probably required to deplete their vacation allotments before going on leave without pay. Depending on the circumstances, mechanics may be able to continue doing most of their work, with driving for road tests handled by someone qualified (the number of mechanics on such a reduced assignment would dictate whether another reduced assignment could be managed). The underlying principle would be this: If the person's job is one that can substantially be done without driving a CT vehicle, management may have them continue to work; if not, they would have to go on LWOP. Depending on the circumstances, however, we might decide to terminate the employee rather than offer the leave (if it was a repeated situation, for example). We do not offer "light duty assignments" to people for situations like this...the employee must be able to perform all essential functions of their work...so if the inability to drive due to license suspension put a heavy burden on the department, we would move to terminate rather than grant LOA. It's really an opportunity to balance the good of the company with the employee's interest in continued employment.

CUBS says... Thank goodness we have never had to face this issue.

Everett Transit says... Anytime a driver is cited on the job, discipline is applied. Level of discipline depends on the citation. Serious infractions could result in suspension or termination. A driver who lost their license for 60 days would be terminated.

Grant Transit says... We contract out for all operations. My contractor stated that a written warning would be given with the first offence and retraining. After the second offense suspension is likely.

Grays Harbor Transit says... Here is our policy for violations and convictions.

Item 3) Violation and Conviction

Discipline for operator "drug and alcohol Free" traffic violations and convictions within a three year period in a company vehicle is as follows:

- a. First violation and conviction within a three year period. Verbal Warning Notice.
- b. Second violation and conviction within a three year period. Written Warning Notice.
- c. Third violation and conviction within a three year period. Written Suspension Notice with one to three days suspension without pay.
- d. Fourth violation and conviction within a three year period. Written Termination Notice.

Non-work related traffic violations resulting in CDL Suspension, adverse impact on the operator's personal insurance coverage, or other "red flag" situations will be evaluated for discipline at the discretion of management.

Intercity Transit says... We have not had this happen to us (yet!) I believe Jim Merrill, Operations Director would be inclined to terminate the person as the individual could not longer perform the essential function of the job -- "driving". Our policies clearly indicated you must hold the "specific required license" to perform your job, so I believe an individual would be terminated from employment. Of course, if there were some underlying medical, ADA, etc. issues, we would take that into consideration.

Jefferson Transit says... Discipline for speeding tickets while on duty or in a Jefferson Transit vehicle. Guidelines will be used within any five (5) year period:

- First speeding ticket – Counseling
- Second speeding ticket – Decision Making Leave with Total Performance Commitment.
- Third speeding ticket – Termination.

Kitsap Transit says... If an operator receives a citation while driving a bus, it calls for a Written Reminder. A second one within 12 months would result in at least a Decision-Making Leave. Suspension, then termination would follow. However, you state that the citations are serious enough in nature that the employee could lose their CDL. If that is the case and the employee has their CDL pulled by the state, then we would probably terminate employment for not being abler to drive. Although this hasn't happened to my knowledge (serious citations causing a loss of CDL), we do have strong language that states they must maintain their CDL.

Pacific Transit says... We have not had this happen here and I am not sure how we would handle.

Pullman Transit says... It would be Pullman Transit's position that because they lost their license they could not perform the essential functions of the job and therefore we would be forced to terminate them. We have faced this when an employee lost his CDL for 90 days due to an alcohol related citation in their personal vehicle and we did terminate that employee, but indicated if the employee wanted to reapply when they got their license back. This would cost the employee seniority and the employee would have to start at the bottom, but it would allow the employee to get the job back and at some point in the future get back to the position that employee held.

Skagit Transit says... Our policy states that if a driver receives two citations in a two year period they will be terminated. This is regardless of the vehicle they are driving. Also, loss of license is immediate termination for a driver.

Twin Transit says... We have not had this situation at Twin Transit that I am aware of.

Valley Transit says... We have not had to deal with this much. In one case where a Operator/Road Supervisor lost his license for 60 days, we were busy setting up new dispatching software and needed some extra non-driving work to be done with the set up. So it just worked out that we had the work and he had the skills. We maintain as a policy that to meet the essential functions of their job they need to have a CDL. If they loose it we may offer a leave of absence (LWOP) for up to 90 days. After that the employee could face termination. The deciding factors would be how soon they will get their license back and their past driving record. If the 90 days expired and they were due to get their license back in a few weeks, we would most likely give a 30 day extension of their LWOP. If this was another time in a bad history of driving and suspensions we would push for termination.

In a nut shell we maintain that they need their CDL to remain qualified for their job. We are under no obligation to move them to another job or to hold their position for them. Our contract does allow for Sick Leaves of Absence for up to 90 days. We are fairly liberal with this and apply it to other situations where the employee requests LWOP. But after 90 days we look at each case on a case by case basis. If an extension of 30 to 60 days will get a productive employee back to work, we will grant the extension. If it is open ended we will usually make a small 30 day extension to give time for the situation to become more defined. At the time an employee is gone for six months, the 90 day LWOP plus multiple extensions, we are in a zone where we will push for termination. Even in an ADA situation, after six months off the job, court cases have held that the employer can demand good attendance and take action.

WSTIP asked Summit Law Group, Kristin Anger says... The manner in which a transit employer can respond to a suspension of a driver's CDL license depends on a number of factors, including whether the employee has "just cause" protection under a labor agreement, whether the employer has policies or contract language addressing this situation, and how the employer has handled similar situations in the past. It is difficult to provide useful legal guidance without knowing what a particular employer's policies and practices are, but we can offer a few

considerations. First, even if the employee has just cause protection, the loss of driving privileges could provide a basis for termination. The employer's right to terminate in these cases would certainly be stronger where the employer has a policy or contract provision stating that suspension of a CDL license constitutes grounds for termination and/or where the employer has consistently terminated drivers upon the suspension of their CDL. Further support for a termination would exist if the employee had been warned at the time of the first citation that a second citation would result in suspension of the CDL and termination of employment, or where there had been other documented discipline for driving or safety infractions. Some labor arbitrators in these cases have upheld terminations where the employee's driving privileges have been suspended for a meaningful amount of time, while other arbitrators have applied traditional just cause and progressive discipline principles to impose something short of termination. While the outcomes often turn on the particular facts, an important factor in these cases is whether the employee was put on notice of the consequences of failing to maintain a valid license. As a result, employers that want to be able to terminate in these situations should pursue clear contract or policy language spelling out the consequences (subject to any bargaining obligations).

If an employer is inclined to impose something short of termination, then it could impose a suspension that runs concurrently with or follows the CDL suspension period. Or it could impose a shorter suspension, then reassign an employee to non-driving work (if any is available) during the remainder of the CDL suspension period. Regardless of which option short of termination an employer selects, it should put the employee on clear notice that future violations could result in discharge. The employer not only has to be concerned about whether the discipline/discharge decision will be upheld, but must also think about its potential liability if this employee is returned to driving duties. If the employee's driving causes an accident, the employer could face a claim of negligent retention if it had knowledge of the employee's reckless driving tendencies and continued to entrust him or her with a commercial vehicle. That is not to say that every CDL suspension must result in termination, but we would not recommend a lack of any disciplinary action.