



## **NEWSLETTER TO MEMBERS**

20 February 2017

There was more discussion at Conference 2016 regarding the application and interpretation of the Law in regards to Driving hours and the Fire Service approved variation and how it should be applied.

Garry Nielsen (Masterton Local Secretary) was asked to provide a more detailed paper and this is attached. This paper has been discussed with Enforcement Agencies. This paper is not formal legal advice but does give considered and expert advice to members to ensure compliance with the Law

### **Background**

At the recent annual NZPFU conference there was some confusion amongst delegates as to the interpretation of current law relating to driving and ensuring our members are compliant and safe. I was assigned a task of clarifying this.

### **References:**

- Transport Act Part 4B
- Land Transport Rule 41001 Work Time and Logbooks 2007
- NZFS Operational Instructions FL1.4GDa – Approved Work Time Variation

### **Commercial Vehicle Inspection Unit:**

I have run my interpretation past Enforcement Agencies and they agree with this but also emphasises some points which may be easy to overlook. These are highlighted later.

### **Land Transport Act Part 4B**

Specifies the law relating the worktime and logbooks; who they apply to and minimum and maximum times. An important point here is that a 24 hour cumulative work day is **any** 24 period an enforcement office and/or the judge wishes to apply (A cumulative work day must be preceded by a 10 hour break)

### **Chain of Responsibility**

Clause 79T of the Land Transport Act sets down that it is an offence to cause or require a driver to breach speed limits, maximum work time, or rest time requirements. This applies to all persons who have influence and control over a driver right up through the organisation (i.e. the chain) if they **knew or should have known** of the breach.

## Land Transport Rule: Work Time and Logbooks 2007 Section 2

### Emergency services

2.2(4) Sub clauses 2.2(5) to 2.2(8) apply to a person driving for an emergency service, or working under the direction of a principal rural fire officer.

[Note: “Emergency” and “Emergency service” are defined terms.]

2.2(5) Subject to 2.2(6), limits to work time hours specified in the Act may be exceeded, [or a rest break may be deferred,] if a driver of an emergency vehicle is required to respond to a priority call.

[Note: “Priority call” is a defined term.]

2.2(6) a dispatcher must consider alternatives, such as the availability of other drivers, including drivers from other locations, before sending a person who has exceeded their work time hours on a priority call.

2.2(7) at the end of a priority call that takes a driver beyond their work time hours, the driver must not undertake further scheduled or routine driving work for the emergency service, but must take the required 10-hour break\* before undertaking further driving for the emergency service that is subject to work time requirements.

#### *Example 1:*

A permanent ambulance service driver, having completed his shift with required breaks, acts illegally if he drives an additional transfer task that exceeds his work time hours BUT that driver may attend a priority call.

#### *Example 2:*

Permanent Fire Service officers respond to an alarm call that occurs at the end of a shift. The call-out, and subsequent fire-fighting tasks, take them past their work time hours. A driver may legally return a fire service vehicle to the station at the conclusion of the fire response, but may not undertake any further driving of vehicles subject to work time requirements until a 10-hour break\* is taken.

\*Note: The approved Variation below reduces this break to 8 hours continuous rest but only for driving for the Fire Service.

[2.2(7A) Where a rest break has been deferred by a priority call, the driver must take the rest break as soon as is practicable.]

2.2(8) for the avoidance of doubt, **volunteer fire fighters** and volunteer ambulance drivers are not subject to work time limits, even when they have worked a full day, when they are called out to attend, or are returning from, a priority call.

#### *Example*

A Fire Service volunteer is employed as a bus driver. He finishes a split shift at 6.00pm, and is called out to a road crash at 1.00am the next morning, before starting his regular bus roster at 7.00am. His logbook, if required, must show the call out, but the call out does not break the requirement for a 10-hour continuous break. While the driver does not commit an offence by exceeding hours in this case. He still has the standard responsibilities set by the Act to avoid dangerous or careless driving (that might arise from excess fatigue).

## Facts and Interpretation of Land Transport Rule

1. All fire service drivers are exempt (the **only** “exemption” from traffic law that career ER Drivers have) from having to maintain a log book.

2. No career fire service driver is exempt from the prescribed work time and rest period other than for
  - Priority calls at the end of a shift
  - Situations covered by the “Variation” approved by NZTA
3. Volunteer ER Drivers are exempt specifically under clauses 2.2(7A) of the Rule (even if they are employed as drivers captured by the Land Transport Act as requiring to comply with worktime limits and perhaps logbooks) should a callout occur during their time off.

#### **NZTA Approved Work Time Variation – attached**

1. A copy is available on Fire Net under Operational Instructions/Fleet/Driving (FL1.4GDa). This must be produced on demand by an enforcement officer.
2. The wording is very clear and unambiguous
3. Officers should be aware that it clearly provides for the management of fatigue and the provisions of driving on a second shift should be considered carefully if the driver has had a busy first shift. This Variation would not be applicable in such situations if it becomes a health and safety matter and subject to any investigation etc. If proven this would also conflict with the Variation and in fact could put its going approval at risk for the Fire Service.
4. It provides **for all appliances** driven within the Fire service (unlike previous “exemptions” that were only applicable to two axle vehicles under 14t etc.)

#### **Additional Comments from C.V.I.U Regarding the Variation (but should not be considered a legal opinion)**

If a driver is required to drive on the second shift it is important to remember that it is only for emergencies. The driver cannot legally do routine work that is not an emergency. Cover moves that enhance the Fire Services operational coverage in the event of another emergency occurring would be considered an emergency.

Emergency is a prescribes term meaning

- A state of emergency
- An incident attended by an emergency service
- An event requiring immediate action to save life or prevent serious injury

It is recommended that Roster Officers keep a record of the circumstances why the driver was required to drive on the second shift which have invoked the Variation. (Remember they are the first link in the “chain of responsibility”)

Although the Fire Service has no control over our drivers required rest breaks between duty shifts there is a duty of care to ensure all **are aware**. Individuals can be prosecuted both under The Transport Act or the Health and/or Safety at Work Act if they were found to be engaged in paid employment prior to commencing driving on a duty shift especially if a serious accident occurred. (They may not feel fatigued but the courts may determine otherwise if required rests were compromised)