



A bold voice for transportation workers

A COMMON SENSE APPROACH TO SLEEP APNEA FOR WORKERS IN THE RAIL, BUS AND TRUCK SECTORS

Fatigue is a systemic problem in the rail, bus and truck industries with many contributing causes including long work shifts, unpredictable schedules and company practices that too often create a tired workforce. Undiagnosed sleep disorders, including obstructive sleep apnea (OSA), can contribute to fatigue and this issue has received significant attention in recent years. However, it would be a mistake for policy makers to only pursue sleep apnea regulations and ignore the other causes of fatigue that we know exist in these sectors. We would also oppose any new mandates or testing rules that do not protect the basic rights of rail, bus and truck employees and that interfere with their ability to promptly return to work once any sleep disorder is treated. While safety in these sectors is always a priority, these are jobs working families depend on and being kept out of work unnecessarily or imposing significant costs on workers are hardships that we will not accept.

Last year, the Federal Motor Carrier Safety Administration (FMCSA) and the Federal Railroad Administration (FRA) issued an Advanced Notice of Proposed Rulemaking – an initial regulatory step asking for input on whether to screen and test for OSA for safety-sensitive rail, bus and truck workers. We agreed with the determination made by the agencies that fatigue is a significant problem in these sectors but urged for a more holistic approach than was presented by regulators by just looking at OSA. This rulemaking was formally withdrawn earlier this year, prompting some lawmakers to introduce legislation requiring a rule on sleep apnea to be completed within one year. At that time, we renewed our plea that regulating and evaluating sleep apnea is only one piece of the fatigue puzzle and legislative solutions must reflect this fact.

The rail industry is a 7-day a week 24 hour a day operation that has substantial problems. Operating crews in the freight rail industry are on call 24 hours a day 7 days a week with most receiving only 1 and ½ hour notice to work a 12 hour shift. They work completely different hours from day to day. And while the 2008 Rail Safety Improvement Act provided for operating rail employees who work 6 consecutive days are to have 48 hours off the manipulation of what constitutes on duty periods allow railroads to work these employees 30 days a month. Hours of service laws are intended to reduce fatigue and ensure that employees are well rested to perform safety sensitive duties, however these can become obsolete when emergency situations arise. This has resulted in signalmen and yardmasters, for example, working up to 16-hour days. Work schedule variability, frequent unscheduled work periods, and unexpected nighttime shift calls are noted factors in poor alertness levels and fatigue among rail workers. Any effective regulatory or legislative approach to combating fatigue must explore changes to the hours of service act and require advance notifications of on duty times. Simply implementing OSA testing and treatment does not address fatigue in any meaningful way.

In the bus sector, we have called for reforms to the Fair Labor Standards Act (FLSA) to ensure that overtime protections are extended to over-the-road bus drivers. Unlike 85 percent of the American workforce, intercity bus drivers are exempt from the FLSA – meaning they are not guaranteed time and a half pay when they work over 40 hours. Too often, this forces drivers to secure second jobs during their “rest periods”, creating a chronic cycle of fatigue that plagues this industry. Recently, Senator Bob Casey (D-PA) and Representative Jackie Speier (D-CA) introduced legislation – the Driver Fatigue Prevention Act – that would fix this problem. We renew our support for this common-sense bill.

Any rulemaking or legislation that does mandate testing for OSA must minimize negative employment impacts and burdensome out of pocket expenses for workers. We must ensure that workers that are screened and tested for sleep apnea can continue to work until there is a confirmed diagnosis of sleep apnea. Treatment options must be provided swiftly and workers must be allowed to return to work once the employee takes remedial steps to address the condition. To this point, the Federal Aviation Administration has implemented guidelines for OSA screening, diagnosis, and treatment that seek to address return-to-work issues for aviation workers. Regulators should review this approach to see if it provides suitable protections for rail, bus and truck drivers in any OSA rule.

Further, any sleep apnea rule or legislative mandate should give consideration to an employee’s duties and the nature of their industry when deciding whether it is appropriate to test that worker. For example, employees in the construction and utility industries may operate a commercial truck for only a short period per day and testing them for sleep apnea may be unnecessary. Similarly, school bus drivers have the ability to rest between shifts, and do not face the same fatigue issues as other commercial drivers. If these drivers are tested for sleep apnea, whether as a result of some future federal mandate or under state or local laws, the protections described above must apply to these workers as well and excessive treatment costs cannot be imposed.

TTD has long supported common sense regulations to improve safety in our transportation networks. Workers, the industry, and the general public would benefit from a comprehensive approach to fatigue that addresses underlying causes specific to the industry, as well as individual medical conditions. We look forward to working with policy makers to shape effective fatigue regulations and improve the safety of America’s rail, bus and truck network.

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