

WHITE PAPER

# Relying On Drivers To Self-Report?

KNOW THE RISKS  
AND  
WHAT TO DO ABOUT IT

# Contents

01

## The Background

5 Reasons Why A Driver's License Can Be Suspended.

02

## The Problem

03

## The Solution

04

## The Conclusion

05

## About Us



There are many risks associated with employing individuals with invalid motor vehicle records to drive on company time. At the top of the list is public safety. That's why commercial driver license holders are mandated by the Federal Motor Carrier Safety Regulation (FMCSA) to notify their employer of any motor vehicle violations within 30 days of conviction. If the driver's commercial driver's license (CDL) is suspended, revoked, canceled, or if he/she is disqualified from driving, the employee must notify the employer within one business day.<sup>1</sup> This allows the employer to take action immediately.

Employers of DOT regulated fleets have the responsibility to ensure a formal written policy is in place detailing how and when employees are to self-disclose driving violations and revocations. This includes all violations and license suspensions received in any vehicle—not just vehicles operated for business. Similarly, while not required by law, non-regulated drivers should also notify their employer of violations and revocations as a general safety practice.

In addition to relying on self-disclosure, most safety and fleet managers obtain annual Motor Vehicle Records (MVRs) on their drivers. This fulfills Part 391 of the FMCSR<sup>2</sup> that requires employers to “at least once every 12 months, make an inquiry into the driving record of each driver it employs, covering at least the preceding 12 months, to the appropriate agency of every state in which the driver held a commercial motor vehicle operator's license or permit.”

[1] <https://www.fmcsa.dot.gov>.

# 5 Reasons Why A Driver's License Can Be Suspended

1



No insurance.

2



Failure to pay child support.

3



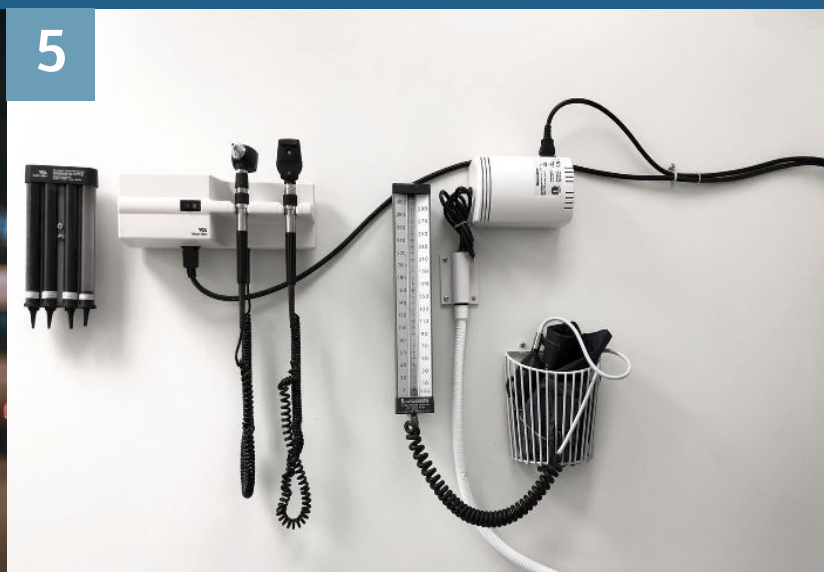
Driving under the influence or other serious offense.

4



Too many points on driving record.

5



An expired Medical Certificate.

## The Problem

**A 2005 study<sup>3</sup>, showed that 20% to 50% of employers do not receive notifications about their drivers' conviction in a timely matter.**

While employees may be aware of the FMCSA regulations and company policies to self-report, they may not always do so. Reasons to not self-disclose motor vehicle violations and instead continue to drive include:

- Fear of losing job
- Not even knowing license is suspended
- Erroneously thinking “they will never get caught”

Many reasons exist as to why a license can be suspended or revoked, and they vary by state. For example, a license could be suspended automatically for failing to pay child support or for failing to renew auto insurance. It's possible for a driver to not even know their license is suspended. The possibility also exists that an employee may purposefully choose not to self-report a suspended license with a hope that he/she might “fall under the radar.” A California study<sup>4</sup> performed in 2013 found that of the suspended or revoked drivers in their study, the majority continued to drive and even found ways to avoid detection at DUI/License checkpoints.

Relying on the annual or periodic MVR to fill in any missing gaps also leaves room for risk. If the annual MVR is pulled the first quarter of each year and an employee receives a suspended license the next month, it could be an additional 11 months until the employer finds out and is able to take appropriate action.

## Traffic Facts



Male drivers involved in fatal crashes had invalid licenses more frequently than did female drivers.



Night crashes were more likely to involve drivers with invalid licenses.



19% of fatalities involve drivers with invalid licenses.



Drivers with invalid licenses, no licenses, or unknown license status are involved in one of every five fatal crashes.

AAA<sup>5</sup>+ National Highway Traffic Safety Administration (NHTSA)<sup>6</sup>

[3] Driver Violation Notification Service Feasibility Study, July 2005, [4] <https://www.dmv.ca.gov>, [5] <https://www.aaafoundation.org>

[6] <https://crashstats.nhtsa.dot.gov>

# The Problem

## Penalties for driving without a valid license.

Driving with a suspended or revoked license is illegal in every state. When an employee willfully drives with a suspended or revoked driver's license, he or she may be cited, arrested, and charged for a misdemeanor offense. The penalties vary according to city and state laws. Examples include:

### Washington

Habitual offenders often receive jail time.

### Illinois

Two-month suspension for first offense of driving without a valid license; possible jail sentence of up to one year for driving with a suspended driver's license.

### California

Driver's car may be impounded for 30 days; driver must appear in court if the offense is bundled with a DUI or other charge.

### New York

\$40 to \$300 fine for an expired license; misdemeanor charge of "Aggravated Unlicensed Operation" (2nd or 1st degree) for multiple suspensions or DUI-related suspensions, with possible felony charge (which can carry a jail sentence).



# The Problem

## Implications to employers.

**Retaining a driver who company “knew or should have known” was unfit, without taking appropriate driver action, is considered a breach of duty.**

By employing unfit drivers—even unknowingly—a company is putting the safety of the public in danger. The company is also opening itself up to increased liability. The legal concept of “negligent entrustment” may make companies responsible for their employees’ actions while behind-the-wheel.

Failing to investigate motor vehicle records prior to hiring an employee, or ignoring poor driving performance once the person is on the payroll, can be an indication of a company’s negligence. A company can be found to be vicariously liable for the acts or omissions of its employees, provided it can be shown that the acts took place during their employment. For example, the FMCSA ordered a Washington State based Trucking Company to cease operations immediately after finding that the company and its driver to be Imminent Hazards to Public Safety.<sup>7</sup> The company may be assessed civil penalties of up to \$26,126 for each violation of the out-of-service order. The carrier may also be assessed civil penalties of not less than \$10,000 for providing transportation requiring federal operating authority registration and up to \$14,739 for operating a commercial vehicle in interstate commerce without necessary USDOT registration. If violations are determined to be willful, criminal penalties may be imposed, including a fine of up to \$25,000 and imprisonment.

[7] <https://www.fmcsa.dot.gov>

A study conducted by California's Division of Motor Vehicles<sup>8</sup> looked at accident-risk factors through analysis of driver record information. One of the main conclusions of the study was that accident risk increases as a function of the number of accidents and citations on a driver's prior record. Identifying and removing at-risk drivers from the roadways not only decreases the likelihood of commercial vehicle accidents, but also minimizes the risk of liabilities for employers. Receiving timely notifications to changes in a driver's license or file is essential in doing so.

## Continuous Motor Vehicle Record (MVR) Monitoring

**Driver MVR monitoring allows employers to identify new citations in real-time before high-risk drivers jeopardize an organization's safety profile and image.**

Today's technology allows companies to receive real-time notifications to employees' driving status. Continuous license monitoring software provides email alerts as changes occur on an employee's driving record. There is no need to wait for annual or periodic reports.



### Email alerts include:

- Newly issued driver citations
- Speeding tickets
- DUIs/DWIs
- CDL Disqualification
- Driver license and medical certificate expirations

By increasing the frequency of license monitoring from annually or periodically to at least monthly, employers eliminate the reliance on self-reporting. They also identify problem drivers in real time– thus removing large gaps in reporting.





The problem of drivers with invalid licenses or no licenses at all still driving has been an issue for decades. AAA first studied this issue in 1997. More than a decade later, in 2008, AAA reported an update<sup>5</sup> showing that one in every five fatal crashes still involves an unlicensed driver—very little changes to the study in 1997.

The current requirement of self-reporting by drivers and annual checks by motor carriers results in a safety vulnerability in terms of having unqualified drivers (i.e., loss of driving privileges following certain convictions for traffic offenses) operating on the roadways longer without the company’s knowledge. Employees do not always self report violations, and many companies today are only checking motor vehicle records annually or periodically.

It only takes one employee with a suspended license to jeopardize the reputation of any company. Gaps between MVR checks could expose a company to increased liability, especially if an employee is involved in an accident while driving for the company with a DUI/DWI.

Since employers bear the liability risk for the actions of their employees, employers should perform their due-diligence to minimize risk. Continuous license monitoring is a more proactive approach to mitigate accident risk and potential lawsuits as a result of employing high-risk drivers to drive on company time. Monitoring is also more cost effective both in the short-term and long-term.

[8] See: <https://www.dmv.ca.gov>

Embark Safety has revolutionized how companies Identify, Evaluate and Mitigate risk. Solutions aim at proving customers with continuous visibility and actionable insight to risk areas that can expose any organization to vehicle accidents, lawsuits and negative publicity. Our difference comes with our ability to collaborate with our customers and develop innovative solutions that add value, streamline operations and reduce costs. We developed an innovative system that continuously monitors employees' motor vehicle records and notifies managers when new violations and suspensions appear in a driver's record.

## Want to learn more?



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