CLIENT ALERTS & INSIGHTS

# Owner-Operators and Federal Leasing Regulation Compliance: Legal Q&A

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Featured Practices: Labor & Employment

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## Key Takeaways:

- Compliance with the Federal Leasing Regulations, in both lease agreements and day-to-day practices, is key for motor carriers that use owner-operators, as noncompliance can create significant legal exposure.
- Technical violations involving compensation, deductions, escrows, or lease terms may give rise to costly individual or class action claims, with potential exposure to damages and attorney's fees.
- Periodic review of lease templates, settlement processes, and operational practices helps carriers confirm alignment with regulatory requirements and supports their independent contractor model.

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The longstanding practice of many motor carriers operating through independent contractor owner-operators remains today despite the many legal threats. Some carriers and drivers prefer the model depending on their geography and industry segment. These relationships for staffing routes and adding equipment capacity are governed by the Federal Leasing Regulations at 49 CFR Part 376 (the “FLRs”). Proper FLR compliance helps defend against FLR-based class actions, attorney’s fees damages, and challenges to worker classification status. In this article, we address some of the common questions we hear and mistakes we frequently see carriers make when engaging owner-operators.

## Q: When do the FLRs apply to motor carrier operations?

**A:** The FLRs apply when an authorized motor carrier uses the equipment and driver services of others to perform regulated transportation. The FLRs require that the provision of equipment and driver services be covered by a written "lease" signed by both parties. The carrier must give the owner-operator a receipt when it takes possession of the equipment. The lease identifies that the equipment will operate under the carrier's authority during the lease term. The equipment's gross vehicle weight rating is not a trigger for FLR application, which is often misunderstood. Also, some states have their own analogous rules for transportation in intrastate commerce.

## Q: What terms must the lease contain?

**A:** Section 376.12 of the FLRs lists terms that are required to be shown in the lease. For example, the lease must state its duration and provide that the carrier has exclusive possession, control, and use of the equipment for that period. Compensation and any authorized deductions must be clearly stated, including whether based on a percentage of linehaul gross revenue, a flat rate, or another method. The lease must also specify the time for payment, which may not exceed 15 days after the owner-operator submits required documentation. Many other technical requirements may need to appear in the lease based on the operating model, such as which party pays for fuel, tolls, permits, and other expenses, as well as insurance responsibilities. The challenge is always that the terms of the lease must match operational realities. Outdated or generic form leases that omit required terms, describe compensation or expense responsibilities vaguely, or set payment timing that does not match the regulation are risk factors.

## Q: What are the most common pitfalls for carriers?

**A:** In our experience, deductions and escrows generate the most day-to-day disputes with drivers. Every deduction must be specified in the lease, including how it is computed, and must be supported by documentation. Escrow funds must be accounted for, earn interest, and be returned within 45 days after the lease ends. Other recurring problems include taking deductions not set forth in the lease, failing to provide owner-operators with the documentation needed to verify chargebacks, commingling or not separately accounting for escrow funds, and delaying the return of escrow balances upon termination of the lease. The possibility of having an independent contractor deemed an employee by a particular court remains one of the biggest challenges for this model alongside the potential for casualty litigation that every motor carrier faces.

## Q: Does the "exclusive control" requirement make owner-operators employees?

**A:** This required provision does not create employee status by itself. The regulation states that the control requirement does not affect whether the owner-operator is an independent contractor or employee. That question is typically decided under applicable state labor and employment laws. Carriers often err by treating the FLRs' exclusive control language as a license to manage owner-operators like employees, for example by setting schedules, restricting their ability to hire their own drivers, or forcing them to accept certain shipments. It is typically operational practice within a particular jurisdiction that triggers exposure, making good operations counsel all the more valuable.

## Q: What is the exposure for carriers when getting it wrong?

**A:** Exposure can be significant as federal law gives owner-operators a private cause of action to enforce Part 376, including recovery of damages and attorney's fees. These claims are frequently brought as class actions. A single noncompliant form lease used across a fleet can multiply exposure quickly. Minor errors, such as an undisclosed deduction repeated across many settlement statements, can add up to substantial class-wide damages in addition to any damages found under a state's employment law, such as violation of meal and rest break rules.

## Q: What steps can carriers take to protect themselves today?

**A:** Best practice begins with auditing the template lease agreement against the FLRs and confirming that settlement statements match the lease terms. Carriers also benefit from routinely reviewing their driver models against day-to-day operational practices. Compliance is a process, which is challenging because business practices and applicable law can and do change. Completing periodic risk assessment reviews and updating paperwork or processes today is always far less costly than defending a class action tomorrow.

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