CLIENT ALERTS & INSIGHTS

Transportation & Logistics Compliance: When Can More Rules Create More Risk?

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Featured Practices: Corporate Compliance & Regulatory Enforcement

Featured Industries: Transportation & Logistics, International Trade & Supply Chain Management

Key Takeaways

- **Compliance programs can create risk when their requirements are more complicated than the business can consistently follow.** In the wake of *Montgomery*, transportation and logistics companies should focus on carrier-selection criteria that address meaningful safety concerns, serve a defensible purpose and can be applied reliably in day-to-day operations.
- **Written policies, contracts and screening standards can become evidence of the company's own expectations.** As litigation and regulatory scrutiny increase, companies should ensure their carrier-selection practices, independent-contractor relationships and other operational realities match what their documents say.
- **As companies review compliance programs for 2027, the goal should be practical alignment rather than more rules.** That means consistently applying and documenting carrier-selection criteria, monitoring carrier authority and other records after onboarding, addressing discrepancies promptly and making sure employees understand the policies they are responsible for carrying out.

Transportation and logistics companies have no shortage of legal obligations and operational risk. The instinctive response to regulatory scrutiny and litigation exposure is often to add more requirements such as additional policies, procedures, screening criteria, documentation and contract terms. That instinct is understandable, but it may also create new sources of risk.

A compliance program is only as effective as the company's ability to implement it and manage against it without error. A policy that is too complicated or disconnected from operations becomes difficult to follow. For example, a provision intended to demonstrate reasonable care may instead show that the company failed to satisfy its own standard. That tension is particularly important in the context of carrier selection following the U.S. Supreme Court's *Montgomery* decision.

Carrier Selection After *Montgomery*

The *Montgomery* decision removed a federal preemption defense that had offered freight brokers a potential path to early dismissal of negligent-selection claims in certain jurisdictions. The result is greater nationwide consistency, but not less risk: more claims may proceed further into litigation, increasing defense costs, potential exposure and insurance costs. Acting without negligence has always been the rule for transportation and logistics providers. Now, for brokers, managing negligence risk in carrier selection is a frontline risk-management issue.

Brokers have access to more carrier information than ever before-including metrics such as operating authority and out-of-service status-through public sources and third-party platforms, which can help identify meaningful concerns before arranging carriage. Choosing among those metrics is the new challenge. Relevant criteria will depend on the company, the freight and the particular risks presented. Collecting information with little connection to safety may restrict the carrier pool without improving the company's risk position. An overly detailed process may produce frequent exceptions that employees cannot realistically administer.

The objective is not the longest possible checklist, but criteria that serve a defensible purpose and can be applied consistently.

Internal Policies Can Establish External Expectations

Montgomery brings this issue to the forefront, but it extends to all safety-sensitive transportation and logistics decision-making. For example, a written carrier-selection policy can help demonstrate a considered approach to risk. It can also establish a standard against which the company's conduct may later be measured. If a company repeatedly departs from its policy, an opposing party may point to that noncompliance as evidence that the company failed to exercise reasonable care. Plaintiffs' lawyers may use the policy as a roadmap for questioning employees and examining individual decisions to show a pattern of disregard for safety or of putting profits ahead of safety.

The key is that policies should be developed with implementation in mind. Everyone involved must understand why each screening requirement exists, who is responsible for applying it and how exceptions will be made and documented. Employees involved in onboarding and load management must understand and strictly follow the process.

Monitoring also needs to continue after onboarding, since a carrier's authority may be suspended, insurance may lapse or a new out-of-service designation may arise after the carrier enters the company's network.

Paper Must Match the Practice

Independent-contractor classification risk presents an issue similar to carrier selection. Federal standards have shifted between administrations, and certain states apply their own, sometimes more restrictive, tests. A Federal Leasing Regulation contract may identify a worker as an independent contractor, but the company's degree of control and the economic reality of the relationship can point in another direction. Provisions designed to demonstrate independence will carry limited weight if dispatch, supervision, equipment or other day-to-day practices contradict them.

Technology Does Not Eliminate the Need for Oversight

Many platforms are now available to help manage safety compliance, particularly in the groundswell following the *Montgomery* decision. Federal tools also remain available and were revamped this year, albeit with many challenges. The FMCSA's Motus registration system, introduced to improve security and reduce fraud, has prompted reported problems with identity verification, mismatched names or addresses, linking DOT numbers, and unexpected changes to operating authority. Companies must regularly review their records and authority status rather than assume a regulator or customer will identify an error first. As with all regulatory issues, any problem should be addressed immediately. Today, it is common for carriers and brokers to give affected customers timely, accurate information when an issue arises to help minimize concern.

A Practical Compliance Program

The measure of a compliance program is not the number of rules it contains. It is whether those rules address meaningful risks and function under real operating conditions.

The best approach is a program the company can understand, implement and ultimately defend if challenged. As transportation companies review their programs for 2027, the focus should be practical alignment: relevant, consistently applied carrier-selection criteria; independent-contractor agreements that reflect the actual relationship; actively monitored public records; and employees who understand the policies they are responsible for carrying out. This means deploying policies and procedures that the business can actually follow.

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