Research Request Summary
This Research Request Summary is a response to a request from a local government agency in Washington State for research and information filed with John Carpita, Public Works Consultant for the Municipal Research and Services Center (MRSC).

On occasion, it is necessary to post these requests to appropriate APWA National infoNOW communities and/or a cross section of Washington State city and county public works officials and special districts to gather sample documents or best practices. John summarizes these responses for the benefit of the inquiring party. As many of these responses are of general interest and, invariably, people who respond want copies of the information, he also posts the responses on the Forum web page of the Washington State American Public Works Association Chapter for the benefit of the greater Washington State public works community.

You can email John at jcarpita@mrsc.org with information requests or suggestions for research of use to the Washington State public works community. If your agency or company has done research or gathered information of general interest, please send it to John for possible posting on this Forum page.

Research Request Statement

CDL Loss
An agency has two employees that are likely to lose their Commercial Driver Licenses (CDL) - which is needed for their work for the agency. The employees have worked for the agency for a long time and have no issues other than not being able to renew their certifications due to non-work related medical conditions that have surfaced recently.
Has this issue come up in your agency?
How has your agency dealt with this type of issue?
Are there policies in place that you can share?
Feel free to forward this email to your employee relations department if needed.
John, 
Unfortunately, the direction this has gone for us has been that we cannot employ an individual in a position without a CDL that requires it; especially if that lack of CDL is going to be for a long term or forever.

Chris
John,

I have had a similar experience in the past. The employee did not keep up their CDL and when pressed they cited medical conditions. City handled it in the following manner.

1 – The employee was notified that the CDL was a condition of employment per the position description. They were advised they would not continue to receive the same rate of pay. They had options to obtain the CDL or seek other opportunities within the City.

2 – Other positions were available for them to apply and strong consideration would be given to them, if qualified.

3 – They were given a defined period of time to seek other employment either within the City or elsewhere.

4 – The employee in question retired versus the other options.

Hope this helps. By the way it set a tone within the organization that others made sure they kept the qualifications/proficiencies up to date.....Glenn

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We have had a similar instance. They let the individual work in another division for a short period of time until he could get his CDL back. If he did not get his CDL back they were going to terminate him.

Lynn
Mr. Carpita,

I faced a somewhat similar situation due to one of my employees losing their CDL due to a DUI – they weren’t even driving, but were sleeping in their car after a night out. Apparently if you are over the legal limit and sleeping in your car WITH THE KEYS you are considered to be in control of the vehicle while impaired. But that aside, I was ready to terminate the employee. The union stepped in and said “Wait a minute, there are other things this person can do within the bargaining unit that are being done by non-bargaining contract or temporary people.” So we eliminated the non-contract workers, and demoted the person for the time it took them to go through required training and pay to get their CDL recertification. We accomplished this through labor-management negotiations. No policy changes or new rules.

As I said it is not exactly the same but similar.

Kahle Jennings
Centralia Public Works
I have dealt with this a couple of times the employee goes on leave or leave without pay and our union contract will hold their position open for one year. He can maintain benefits through COBRA or his union or FMLA. If there is a chance he can get his CDL later any of these should work. If the union contract is silent and you want to keep the employee on your staff after the 12 weeks FMLA I would get the boards approval and do it administratively. Then once the employee is on leave without pay fill the position with a temp that has a CDL. I hope this helps.
John Carpita

From: Scalf, Roy [Roy.Scalf@snoco.org]
Sent: Monday, September 12, 2011 11:39 AM
To: Carter, Owen; John Carpita
Subject: RE: CDL Loss

John,

This is a great question and one that I believe more agencies will be struggling with as our work forces continue to age. Since you said these are the result of non-work related medical conditions, I will assume that the loss of CDL did not occur due to a violation of law such as DUI.

We would look at this in a manner similar to ADA accommodations. Can the employer reasonably accommodate the lack of CDL... that is, is the employee able to perform the essential functions of his/her position with or without a reasonable accommodation? In the case of fleet mechanics, if they are unable to maintain a CDL, they are unable to test drive CDL equipment. Can the employer reasonably accommodate this “disability”? Are there enough employees on staff who would be able to do the test driving without creating a hardship on the employer?

How about maintenance workers? If maintenance workers are required to maintain a CDL and operate CDL equipment on a daily basis, can the employer reasonably accommodate employees who do not hold a CDL? What happens in a snow and ice fight when you need every employee you have to keep the fleet on the road? If the employer determines that there are enough CDL drivers to staff a snow and ice fight, and there are enough drivers to keep daily operations going, then does the affected employee have to be demoted to a laborer classification? If the employer cannot reasonably accommodate the lack of a CDL for an employee in a position that requires a CDL, then a medical layoff and reassignment services may be the path.

This is a complex issue, and one of these alone takes an enormous amount of time to work through.

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please consider the environment before printing this email & duplex print when possible.

From: Carter, Owen
Sent: Monday, September 12, 2011 10:04 AM
To: Scalf, Roy
Subject: FW: CDL Loss

Can you please answer?

Owen Carter, P.E.
County Engineer/Deputy Public Works Director
(425) 388-6460
We have not had this happen to us. A valid CDL is a requirement for our road crews. Without that, they would be unable to perform their jobs and, depending on how long it is going to take to re-obtain their CDL, would either be placed on leave until they can get their CDL back or if it is a permanent or a long term loss, they may be dismissed.

Most of our guys do not have a large vacation bank, so in a short period of time after being placed on leave, they will be absent with no paycheck coming in.

I would be interested in what others have to say regarding this issue.

Steve
John: Long answer to a short question. Following is how the Ellensburg policy manual would be applied to this situation.

If it is an essential function of the employee’s job description, he/she will be subject to disciplinary action. See City policy below:

As part of the requirements for certain City positions, an employee may be required to hold a valid Washington State Driver's license and/or hold a valid commercial driver’s license (CDL) and continue to meet all the requirements for maintaining such licenses. If such an employee's license is revoked, suspended or lost, or is in any other way not current, valid and in the employee's possession, the employee shall promptly notify his/her department director and immediately suspend driving duties. The employee may not resume driving until proof of a valid, current license is provided to his/her department director. Depending on the duration of license suspension, revocation or other inability to drive, an employee may be subject to disciplinary action, including termination. An employee’s failure to notify his/her department director of such a license suspension, revocation or other license disqualification may also result in disciplinary action, up to and including termination.

Periodic checks of employee’s driver’s licenses through visual and/or formal State Department of licensing review checks may be made by department directors, supervisors or Human Resources. Employees who do not hold a valid driver’s license must not operate a City vehicle until such time as a valid license is obtained.
John  
I have not dealt with this one before but know that it will continue to be an issue with aging Maintenance Workers. They have made the CDL requirements very difficult. One approach many are considering is downsizing their fleet so CDL’s are not required. I will include this as a discussion item at the next Maintenance Committee meeting.

Thanks

GLENN AKRAMOFF  
PUBLIC WORKS DIRECTOR  
CITY OF COVINGTON  
253 638-1110 EXT. 2253
Thanks Bruce. The dual classifications have a benefit I’d never even considered before now!

Brian

We have not had to deal with this situation directly, but we did have the discussion with the Teamsters union several years ago when DOL made the CDL medical requirements more stringent.

We have three positions in the field, two are required to have a CDL as a condition of employment (Heavy Equipment Operator and Maintenance Technician) and the third is Maintenance Worker which requires only a valid WA drivers license. Because we have the luxury of managing a fairly large organization (120 field staff, 90 of which require a CDL) we experience ongoing personnel turn over in the positions affected by CDL requirements; on average several promotions and consequent backfill actions at the Maintenance worker level annually.

All this said, we verbally committed to the unions that if an employee lost their CDL but was able to retain a valid WA drivers license and had no relevant history of performance concerns we would afford them the opportunity to voluntarily demote to the position of Maintenance Worker. But only if such a position were open and/or would net out neutral after backfilling. We emphasized the caveat that the business need was the trump card. It might be a few bucks less an hour for the individual but we would be able to retain a skilled employee and he/she would be able to stay gainfully employed.

I still support this line of thought and would recommend such if this scenario presents itself here.

Bruce
Hi, John. We in Renton have had a similar situation in which an employee audit revealed employees who were required to have CDL licenses and also operator and/or training certificates according to their job descriptions as Maintenance Workers III, did not have their required licenses. The way we handled this was to give these employees a 6 month grace period to get their licenses or else be demoted to a level in which the job descriptions did not require such licenses (Maintenance Worker I). A couple of employees did not meet the deadline and were demoted. We then gave these employees a 1-year additional grace period to get their required licensees or have their employment terminated (because it was hurting our operation to have less than the required certificated/licensed employees, and who therefore could not perform needed tasks). One employee did not meet this second deadline and was terminated. All of this was worked out with the Union in advance so that we were on the same page.

Gregg

Gregg Zimmerman, P.E.
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***Note new e-mail address***
John,

I don’t think we have formal policies, but an employee whose position requires a CDL must continue to hold one to keep the position. We have accommodated temporary suspensions of CDL’s via reassignment for a limited time period on a very limited basis. We have also disqualified people from positions when they lost their CDL. In the cases of disqualification if another position is available in the City that doesn’t require a CDL the employee is allowed to apply for the change. That is their only option.

I hope this helps.

Pete Rogalsky
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John,

Steve forwarded your message to me and I apologize it has taken so long to respond.

We are facing the same issues here and have been discussing what to do. I think we have decided that if the employee can supply a doctor’s note explaining that they have a medical condition that will prevent them from renewing their CDL, we will make note of it in their personnel file and they will be excused from that requirement of their job description.

This is all predicated on whether or not we have a sufficient number of CDL drivers available to handle a storm or other special event. If it ever comes down to the fact we are short on CDLs we will have to rethink our approach. I hope that it never comes to that...we have several long-time, good employees that are now facing the fact their health conditions may prevent renewals.

Please let me know if you come up with a policy on this issue because I’d love to take a look at how this is being handled in other agencies.

Molly
John,

If a worker loses their CDL due to medical reasons, and if the agency does not have any other open positions that they can shift the worker to, then termination would be okay. As mentioned in one or more of your other responses, there could be union issues that would need to be examined.

Obviously if the employee is a valued, competent employee you should do your best to accommodate them, but accommodation might be difficult, particularly in smaller jurisdictions.

Jim D.

Talked to Jim Doherty, who said there are no FLSA or ADA conflicts. The CDL license is required and the County incurs liability if a non-CDL licensed employee has an accident while driving a piece of equipment that requires CDL.

Jim, any further comments? The comment file from folks around the State is attached.

Thanks John. You mentioned you would have this issue reviewed by legal, any helpful info on that front?

Derek Pohle, PE
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Here is a collection of all responses to date on the loss of CDL question. I’ll also post this on the APWA Forum page.

Please call or email me if you have any questions or need further information.
John Carpita

From: Michael Michael [mmichael@ci.shelton.wa.us]  
Sent: Friday, September 16, 2011 12:58 PM  
To: John Carpita  
Subject: Re: Fwd: CDL Loss

John,

Here is a response on this one from our HR person... In my discussion with Vicki, she thought that in a case of this nature, if CDL was essential to their job, it would be likely this situation would result in a separation of service unless there was a vacant position for which they qualified.

Mike

Michael J Michael, PE  
City Engineer  
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MMichael@ci.shelton.wa.us

>>> Vicki Look 9/12/2011 5:00 PM >>>

Mike,

We haven't had this particular issue, but we have an operator with a CDL who is not able to perform critical functions of his position due to medical issues.

If having a CDL is a requirement of the position and their medical condition is not one that can be resolved within the time allowed under FMLA, then we would determine separation based on the physician's statement regarding their ability to return to work within a reasonable amount of time.

This is reviewed on a case by case basis, and we have no written policies.

Vicki

Vicki Look, Management Assistant  
City of Shelton  
360-432-5105

>>> Michael Michael 9/12/2011 1:27 PM >>>

Vicki,

We get questions of interest from John from time to time. This is one you may have some information on or interest in.

Mike