# Task 24-1: Inequitable Leasing Agreements and Terms in the Motor Carrier Industry and Whether They Affect the Frequency and Quality of Maintenance Performed on Subjected Vehicles

*FMCSA asks TLTF to review and share inequitable truck leasing agreements and their terms, and discuss whether they affect the frequency and quality of maintenance performed on subjected vehicles.*

## I. Initial Discussion of Task 24-1

A. How inequitable truck leasing agreements affect the frequency and quality of maintenance performed on subjected vehicles.
   1. Drivers do not earn enough under the lease to pay for maintenance.
      a. Cannot afford to do regular, preventive maintenance, including larger repairs like brakes or replacing tires.
      b. Cannot save funds to pay for immediate repairs (like a breakdown during a delivery).
      c. Must choose between family needs and maintenance.
      d. The above factors lead drivers to delay maintenance, which may increase costs and damage truck parts.
   2. May exacerbate existing challenges in keeping up with maintenance, including lack of savings for unexpected maintenance needs.
   3. Carriers often lease older and out-of-warranty trucks requiring more maintenance.

B. Inequitable leases are detrimental to drivers.
   1. Carriers often include additional costs lessees must pay.
      a. Electronic logging devices, which measure time and miles driven.
      b. Carrier-mandated insurer may charge above-market rates.
      c. Carrier-mandated fuel supplier may charge above-market rates.
      d. Carrier-mandated repair shops. Carriers may deduct repair costs from driver income and provide little or no documentation on repairs.
   2. Leases may include additional fees or expenses.
      a. Advances in pay from motor carrier/lessor.
      b. Late deliveries; no compensation for delays caused by customer.
      c. Use of MacroPoint and other programs used to track trucks.
      d. Late paperwork.
      e. Excess mileage.
      f. Determination of damage when returning a truck at the end of a lease, including tire wear. Carriers decide the amount, which may be excessive.
      g. Residual payments to receive truck titles.
      h. Out-of-service orders for failing roadside inspections due to maintenance issues.
      g. Worn tires or scratches on body of truck when driver leaves carrier without completing the lease. Fees drain remaining maintenance escrow funds that carrier should have returned to the driver.
      h. Forced purchases, which are unlawful to require as a condition of the lease.
   3. Drivers may assume additional financial responsibility.
      a. Some carriers require a $1500 bond.

   b. Some require a promissory note in exchange for an auxiliary power unit (APU), wet kit and/or hydraulics.
4. Excessive driving requirements, sometimes to catch up on lease payments, affect safety.
5. Requiring drivers to work exclusively for the carrier that leases them a truck.

C. Some drivers are especially vulnerable to inequitable leasing agreements.
1. Young, new, and/or less experienced drivers.
   a. Do not understand how to estimate expected income.
   b. Do not know about expenses associated with operations and maintenance, including dispatch fees, insurance, tolls, and federal highway use tax.
2. Recent immigrants.
3. Drivers who speak English as a second language.
4. Anyone without experience with contracts and/or lease agreements who does not see red flags in a lease or does not understand financial terms like non-amortizing loans.

D. Barriers and trends that perpetuate inequitable truck leasing agreements.
1. Carriers have more access than drivers to:
   a. Financing.
   b. Information related to the transport market, including rates and available demand for loads.
   c. Information about the condition and repair history of their (usually older) fleet.
   d. Carriers have more legal support to add arbitration clauses in leases prejudicial to drivers, and/or to sue drivers who try to walk away from a lease.
2. Drivers cannot afford to sue, or legal support costs more than what a driver seeks reimbursement for, such as escrow funds.
3. Drivers who sue lessor/carrier/employer must find a new carrier to work with.
4. Carriers/lessors may exploit lessees via escrow funds.
   a. Do not use escrow funds to pay for maintenance, which is the purpose of the fund.
   b. Claim escrow funds are insufficient to cover a repair.
   c. Do not specify rules related to escrow funds in the lease. Under Truth-in-Leasing rules, lessor should provide all details about deductions to escrow and pay interest.
   d. Do not pay driver interest on escrow funds.
   e. Do not give driver financial statements to which they have a legal right.
   f. Create paperwork that seems legitimate but hides unfair fees.
5. Leases do not enumerate all financial obligations of drivers for their trucks in terms of costs (maintenance, tolls, insurance).
6. Carrier control over leans, leases and drivers' income creates a predatory landscape where drivers end up losing their vehicle.
7. Carrier offers loads at low rates that drivers cannot refuse given their financial circumstances.
8. Carriers/lessors profit from lending to people whose expenses consistently outpace income, similar to pay day and title loans.
9. Carriers falsely advertise high wages and income to potential lessees.
10. Carriers often control the terms of the agreement.

E. Truck ownership and leasing models.
   1. Carriers may own a new or used truck and lease it.
   2. Carriers often do not own the truck; they finance the truck. Carriers profit by leasing the truck to a driver at a higher interest rate than it pays its own lender.
   3. Not all truck leasing companies are also motor carriers.
   4. Different types of business models across the industry may pose barriers for drivers who want to switch carriers.

F. Labor issues and gray areas.
   1. Rights of truck drivers who are employees vs. rights of drivers who are independent contractors. How do we ensure fair treatment of independent contractors?
   2. Should leases exist between a driver and the carrier who is also their employer?
   3. The applicability of Fair Labor Act varies.
   4. How does the Federal Arbitration Act apply to leases?

**II. Best practices for creating more equitable truck leasing agreements.**

A. Greater transparency and accountability by industry to deter bad actors.

B. Ensure information disclosure that benefits drivers.

**III. Recommendations**

A. Create greater transparency for drivers.
   1. Carriers provide financial information on escrow accounts.
   2. Carriers provide the age and mileage of trucks, and maintenance records, which should match records of maintenance paid for by the prior lessee/driver.

B. Identify alternatives to carrier financing for drivers.

C. Consider whether this leasing model should continue and the consequences of its elimination.
   1. Would those drivers become carrier employees?
   2. What happens when drivers are paid fairly? This change may lead to a more efficient, safer industry, and/or higher wages may push up freight costs and transport rates.
   3. Currently industry shifts some of its costs to drivers, government, and the public, both financially and in terms of safety.

D. Motor carriers should not be leasing companies.

E. Educate drivers before they sign a lease.
   1. Provide information in multiple languages that reflect driver demographics.
   2. Cover leasing terms, including operating expenses and projected income.
   3. Explain financial terminology.
   4. Budgeting for maintenance expenditures.

F. Define a framework for leasing agreements that is fair to drivers.

G. Better understand the terms of title loans and how they compare to high cost “payday” and other loans tied to short-term income streams.

H. Leverage forums to gather information from drivers and carriers/lessors.
   1. The Mid America Trucking Show (MATS) in Louisville, KY, March 21-23.
   2. Hold a public meeting of TLTF at MATS.
   3. Publish a notice in the Federal Register in advance of the meeting requesting that drivers provide specific information and documentation about their leases.
   4. Provide a list of questions to gather information from drivers, carriers, and the public.
      a. Lease terms, length, and start and end dates.
      b. Make, model and year of tractor, and mileage at time of the lease.
      c. Down payment, interest rate, and weekly payments.
      d. How well did the driver understand the terms of the lease? If they did not understand, why not?
      e. How long did the driver have to review the leasing contract before signing it?
      f. How well did the driver know the history/condition/maintenance needs of the truck they received? Was there an opportunity for an inspection?
      g. Did the driver complete the lease-purchase as expected? If not, why not?
      h. How much did the driver owe when ending the lease? Does the driver still owe money on the vehicle tied to the lease?
      i. Why choose lease purchase over other types of purchase options?
      j. How did the driver expect to benefit from the lease?
      k. How did expectations compare with the reality of working under that lease?
      l. Would the driver make a lease purchase again, knowing what they know now?
      m. What information do drivers need before deciding on a lease?
      n. What is the most challenging aspect of the driver/carrier relationship? What would the driver change about that relationship?
      o. Did the driver understand their financial responsibility in the case of a major breakdown?
      p. Was the driver familiar with how the company treats independent contractors vs. company drivers vs. lease-to-purchase drivers when demand slows? Lease-to-purchase drivers may be worse off.
   5. Carriers discuss their business model.
      a. Successful leasing programs, types of leases, and how carriers determine whether to lease older or newer trucks to drivers.
      b. Identify bad actors.
      c. Clarify underwriting methods. Do they use consumer credit scores or primarily cash flow when choosing lessees?