

LIMITED LICENCES

THIS ISSUE OF TRUCKERS' GUIDE TO THE LAW FOCUSES ON THE LAW RELATING TO THE ISSUE OF LIMITED LICENCES.

What is a Limited Licence?

Commonly referred to as a "work licence", a limited licence is a driver licence which permits someone who is disqualified or suspended from driving to drive within certain constraints imposed by the Court.

Key Points

- Not all suspended or disqualified drivers are eligible to apply for a limited licence, and there is a 28-day "stand down" period in many other cases, during which time you cannot apply for a limited licence.
- If a limited licence application relates to a disqualification order made by the District Court, an application for a limited licence must be made at the same Court where the disqualification was imposed.
- It is not possible to obtain a limited licence to drive in a passenger service, except in extremely limited circumstances.
- If you are suspended or disqualified from driving, or you are charged with an offence where disqualification is a likely outcome, it is important to contact a lawyer as soon as possible to discuss your options.

Grounds for Applying for a Limited Licence

A Court **may** grant a limited licence to a disqualified or suspended driver if the Court is satisfied that:

- the disqualification or suspension has resulted, or will result in, extreme hardship to the applicant or undue hardship to a person other than the applicant; and
- granting a limited licence would not be contrary to the interests of public safety.

Extreme hardship is often proved if the person's disqualification/suspension would result in them losing their job, business or livelihood. The non-availability of alternative transport options is another factor that may cause extreme hardship to someone.

Undue hardship is a lower threshold than extreme hardship. When someone loses their licence, it is likely to cause inconvenience to their family and friends, but inconvenience is not a good enough reason to obtain a limited licence. There must be something more.

For example, an employer may suffer undue hardship if it would be difficult to shuffle responsibility around within the employer's business so as to accommodate someone's disqualification/suspension, or if it would be a burden on an employer to employ someone to take over for the period of the person's disqualification/suspension.

If an application for a limited licence is granted, the Court is required to specify certain matters in the order. Those matters are:

- the purpose for which the limited licence is issued;
- the particular vehicle(s) or type of vehicle(s) which may be driven;
- the days of the week and the times at

which the vehicle(s) may be driven; and

- such other matters as are necessary to limit the order to alleviating the hardship alleged.

28-Day "Stand Down" Period

In some cases, a 28 day stand down applies, and an order authorising a limited licence cannot be made within 28 days of the disqualification. There is a stand down if you are disqualified for an offence:

- involving driving hours or logbooks;
- which relates to reckless or dangerous driving, careless or inconsiderate driving causing injury or death, or failing to stop after an accident;
- which relates to offences involving alcohol or drugs;
- which relates to applying for or obtaining a driver licence while disqualified from doing so; or
- which relates to insecure loads on vehicles.

If you have been disqualified from driving for offences other than those listed above, or suspended after incurring excess demerit points, the stand-down period of 28 days will not apply.

Who Cannot Apply For a Limited Licence

You may not apply for a limited licence if you:

- have been disqualified from holding or obtaining a driver licence by an order which relates to repeat offences involving alcohol or drugs;
- are disqualified from driving a vehicle being used in a transport service (other than a rental service) because you have committed one of the fol-

lowing offences (if the limited licence would authorise you to drive a vehicle being used in a transport service (other than a rental service):

- ⇒ contravention of specified breath or blood alcohol limit;
- ⇒ contravention of specified breath or blood alcohol limit by person younger than 20;
- ⇒ driving or attempting to drive and failing to complete a compulsory impairment test when required and a subsequent blood test contains evidence of use of drugs;
- ⇒ driving or attempting to drive a motor vehicle on a road while under the influence of drink or a drug, or both, to such an extent as to be incapable of having proper control of the vehicle;
- ⇒ failure or refusal to remain at a specified place or to accompany an enforcement officer;
- ⇒ failure or refusal to permit blood specimen to be taken;
- ⇒ causing injury or death while driving under the influence of alcohol;
- ⇒ causing injury or death while driving carelessly under the influence of alcohol.

- are disqualified from holding or obtaining a driver licence by an order made on your conviction for driving while disqualified or contrary to a limited licence;
- are disqualified from holding or obtaining a driver licence by an order made on your conviction for one of the following offences, where that offence is committed within 5 years of any other offence also specified below and arising from a different incident, whether or not the offences are of the same kind and regardless of when a conviction was entered:
 - ⇒ reckless or dangerous driving, careless or inconsiderate driving causing injury or death, and failing to stop after an accident;
 - ⇒ driving offences involving alcohol or drugs;
 - ⇒ applying for or obtaining a driver licence while disqualified from doing so;
- are subject to an alcohol interlock sentence, or would have been subject to such a sentence but for a specified

exception; or

- are subject to a driver licence stop order.

Procedure For Application

When you instruct us to apply for a limited licence on your behalf, we provide you with a questionnaire to complete, to assist us preparing the application. The following information is vital in any application:

- full name and home address;
- contact details;
- date of birth;
- Information about your previous speeding tickets, driving convictions, their results and status of any fines (i.e. if fines have been fully paid or if you have some payment arrangement in place);
- type of employment and your duties as part of your employment;
- the name and address of your employer and person you report to;
- the make, model and registration numbers of vehicles you drive;
- days and hours of the week you need to drive;
- the area you need to drive in;
- details of the hardship you would face if you did not have a licence;
- details of the hardship someone else would face if you did not have a licence.

These are only the main points. The questionnaire will seek further information. You would need to provide the following to us:

1. a completed limited licence questionnaire
2. a copy of your driver licence (if you have your licence);
3. details of your driver licence;
4. the original Notice of Suspension (if demerit point suspension);
5. copy of owner driver contact (if you are an owner driver);
6. copies of payslips and bank statements.

Once we receive all the relevant information, we prepare draft affidavits. Upon confirmation of the draft documents, these are sent to the Police for their consent.

Once the affidavits have been sworn, the application is filed in the District Court. There is a filing fee for all applications which is currently \$150. For demerit suspensions, the application fee is \$250 as it includes a fee for the sealing of the orders. Affidavits must be sworn before a person authorised to take

oaths e.g a lawyer, Justice of the Peace, or Court Registrar.

A hearing date is then allocated by the Court. This is usually at least 3 working days from the date of filing (not including the date of filing). For example, if an application is filed on a Monday, it will not usually be allocated a hearing date until at least Friday.

The application will normally be granted by the Court on the day if the Police do not oppose it and it fulfils all the criteria listed above. If there is an opposition by the Police, the matter is adjourned, usually for a week, for a hearing date for the application to be argued before a Judge.

You must be present at Court for the hearing of the application unless advised otherwise. The hearings are typically at 10am.

What happens after the Court grants a limited licence?

After a Judge grants you a limited licence in the morning, the Court will issue you with a sealed Order. This is a very important document. Most Courts have a practice whereby the Order will be issued to you after 1pm on the day the Order is granted. You need to go to the Court Registry to pick up the Order.

You then need to take this Order to NZTA or an authorised driver licensing agent, and fill out an application form for a limited licence. The limited licence will cost you \$46.50 and will arrive in the mail. You need to ensure you read the Order issued by the Court and fully understand and adhere to it. You must have the Order and your limited licence and logbook with you at all times when you are driving. If you do not usually drive with a logbook, you will need to purchase one.

If you are stopped by the Police while driving on a limited licence, you must tell them immediately that you are on a limited licence.

This summary is intended only as a guide. It is not a full summary of the law relating to limited licences.

If you have specific questions, or need legal advice on a particular issue, please contact Cathy Fisher or Shafraz Khan at Fortune Manning Lawyers. Cathy and Shafraz have extensive experience in all areas of the law relating to the transport industry.

Cathy Fisher
cathy.fisher@fortunemanning.co.nz

Shafraz Khan
shafraz.khan@fortunemanning.co.nz

FORTUNE MANNING
lawyers