

CDLE Unemployment Insurance Audits

September 2016

Classification of Owner-Operators as Employees or Independent Contractors

This document provides information about the factors relied upon by the Division of Unemployment Insurance when it conducts employer audits. This document specifically applies to the employment classification of truck drivers who both own and operate their own trucks. While these factors may represent some of the considerations as to the status of the working relationship, the circumstances differ from case to case and additional factors may be considered relevant to determining the employment classification of workers.

In reaching its determination, the Division treats every employment relationship as unique. The Division does not rely solely on any single factor in making its determination, but considers the totality of the circumstances and all relevant factors in accordance with applicable statutes and cases. When a company requires certain conduct and working conditions for the purpose of complying with federal laws or regulations, the Division will not consider that conduct and those conditions as indicative of a particular worker classification in making a determination. For more information regarding relevant statutes and cases, please visit our website at www.coloradoui.gov/properclassification.

A worker is generally presumed to be an employee unless it is demonstrated that he or she is (1) free from control and direction in the performance of the relevant service, and (2) customarily engaged in an independent trade or business. Some of the primary factors that might be relevant in the Division's determination, as they relate to control and direction and customary engagement, could include:

- Whether the owner-operator owns the motor vehicle or leases it from any person other than the carrier.
- Whether the owner-operator enters into a written agreement with a carrier that contains the necessary provisions as specified under state law (if the written agreement requires certain conduct and working conditions for the purpose of complying with federal laws or regulations, the Division will not consider that conduct and those conditions as indicative of a particular worker classification).
- Whether the owner-operator may terminate the written agreement at any time after reasonable notice.
- Whether the owner-operator is responsible for the maintenance of the motor vehicle.

- Whether the owner-operator bears the principal burden of the motor vehicle operating costs for items such as fuel, repairs, supplies, insurance and personal expenses while on the road. Pass-through expenses are allowed with proper documentation.
- Whether the owner-operator supplies, or is responsible for supplying, the necessary personal services to operate the motor vehicle.
- Whether the owner-operator determines the details and means of performance, in light of and in consideration of shipper and customer needs and requirements, including loading, routes and number of breaks to be made during the haul. The existence of a completion schedule and / or mutually agreeable range of delivery times established in relation to the customer / shipper needs shall not necessarily factor into this analysis.
- Whether the owner-operator may refuse to accept work when requested by the carrier.
- Whether the owner-operator is compensated by a fee based upon the gross revenue (percentage of the value of load), distance of the haul (mileage based), the weight of the goods, the number of deliveries or any combination of those factors.
- Whether the owner-operator has an ownership interest in a business that the owner-operator alone may sell or give away without restriction from the carrier. In such instances, it should not be assumed that any outstanding contracts for service will continue.
- Whether the owner-operator's business could continue if the relationship with the carrier were terminated.
- Whether the owner-operator may choose to work for one firm as long as the opportunity exists for the owner-operator to work with others.

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