



## The InterConnect FLASH!

Practical Bursts of Information Regarding Critical Independent Contractor Relationships

### FLASH NO. 1

#### TRUCK DRIVERS AS INDEPENDENT CONTRACTORS: WHAT DOES THE IRS SAY?

The basic employer/independent contractor analysis is no different for a motor carrier than it is for any other business. According to IRS publications, the determination of whether a driver is an independent contractor or an employee under Federal law is based on three factors: (a) behavioral control, (b) financial control, and (c) the relationship between the parties.

**A. Behavioral Control.** A driver is an employee if the motor carrier has the right to direct and control the driver. The carrier does not actually have to direct and control the driver, but only to have the right to do so. If the carrier gives directions about what should be done rather than how it should be done, chances are better that the driver will be found to be an independent contractor.

**B. Financial Control.** Who controls the business part of the driver's work? The relationship would be more like an independent contractor if the driver has a significant investment in the work. It would be helpful if the driver had some sort of profit or loss opportunity or incentive compensation arrangement. In addition, the contract between the carrier and the driver should be structured so that the driver is responsible for paying the ordinary expenses of the business.

**C. Relationship of the Parties.** How do the parties perceive the relationship? The driver should be paid only for services performed, not by any sort of a fixed or hourly rate. Benefits such as pension plan or medical coverage paid by the carrier should be avoided.

In planning for carrier operations, the FMCSA regulations take precedence over employee/independent contractor concerns. There are specific Federal Motor Carrier Safety Regulations that provide that compliance with FMCSA safety rules should not affect the determination of whether a driver is an employee or an independent contractor.

If a carrier plans to use independent contractors in its carrier operations, the various factors that make up a successful independent contractor relationship must be described in a written agreement between the carrier and the independent contractor. The contract process should be managed with extreme care. Evidence that there was no contract or that the parties did not operate within the terms of the contract would be very damaging to the carrier's efforts to prove an independent contractor relationship exists.

Benesch can prepare independent contractor agreements that cover these and other issues. Please call if you have questions or if we can be of further assistance.

For additional information on this topic, please contact **Robert M. Spira** at (216) 363-4413 or [rspira@beneschlaw.com](mailto:rspira@beneschlaw.com).

#### Additional Information

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