

# Driver services: Employee or independent?

The trucking industry has always been under pressure to save costs and time both in the delivery of the service and the administration of it. In today's world of high fuel prices, the temptation to save costs and time when it comes to drivers is very appealing.

For years, one way companies have attempted to do this is through the use of self-employed drivers or "driver services." By contracting a driver, the fleet can add or subtract capacity without the obligations and costs of having an employee.

There are good and bad sides for both the carrier and the driver in this type of arrangement. First, let's state the obvious: Canada Revenue Agency hates the concept, and rarely does a driver service relationship stand up to a CRA review. They would rather have tax money coming in from an employer every month than have a bunch of self-employed accounts to monitor and wait for monthly or annual tax payments.

They're also probably tired of seeing the same mistakes and misinterpretations again and again.

CRA has a guidebook called *Employee or Self-employed (RC4110)* that provides the framework for how the agency evaluates whether a relationship is business-to-business or employer-employee. Here's what they look for:

- The level of control the payer has over the worker;
- Does the worker provide his own tools and equipment?;
- Can the worker sub-contract the work or hire assistants?;
- The worker's degree of financial risk;
- The degree of responsibility for investment and management held

## Driver services pros and cons

### Payer Advantages:

- Ease of calculations
- No holding funds
- No reporting or filings with CRA
- No forms or filings upon termination
- No benefit costs through EI, CPP, WSIB, health plans
- No rules for dismissal, labour codes do not apply

### Payer Disadvantages:

- Faces the consequences of CRA penalties if the relationship is determined to be employment or not self-employment

### Worker Advantages:

- Bigger paycheques (no tax, EI or CPP withheld)
- May be able to expense costs that could lower taxes

### Worker Disadvantages:

- Must pay tax bill on their own
- Must file GST/HST returns
- Responsibility of running a business
- More complicated tax returns
- May lose meal claim
- No entitlement to EI benefits □

## Tax Talk

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by the worker;

- The worker's opportunity for profit;
- Other relevant factors, such as written contracts.

The determination of whether a worker is an employee or a self-employed individual goes beyond who pays taxes. It affects how a worker is treated under many laws including the Canada Pension Plan, the Employment Insurance Act, Income Tax Act, Workers Compensation, and other labour codes.

Another point that often catches people off guard is that the self-employed driver must charge GST/HST for his services if he ex-

ceeds the annual \$30,000 gross limitation. Where a self-employed driver does not use his own truck and does not assume liability for the supply of a freight transportation service, the driver is not supplying a freight transportation service for GST/HST purposes. He is providing a driving service, which is taxable.

So what red flags attract CRA to possible violations?

Two situations probably cause 90% of all CRA audits to determine if workers are employees or self-employed: when the driver gets fired; and when the driver gets hurt or is unable to work. Faced with no EI, or Workers Comp or disability income, an upset worker will turn to CRA for help. The response may well be an audit.

If a worker is found to be an employee, the consequences can be steep. An employer who fails to deduct the required CPP contributions and EI premiums must pay

both the employer's share and the employee's share of any contributions and premiums owing, plus penalties and interest.

If a worker or payer is not sure of the worker's employment status, either party can request a ruling to have the status determined. Use Form CPT1, *Request for a Ruling as to the Status of a Worker under the Canada Pension Plan and/or the Employment Insurance Act*.

Whether you're a driver or a fleet manager, a driver service arrangement can give you flexibility, tax advantages, and help keep certain costs in check. But only if all parties involved are clear about their obligations and responsibilities. □

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