

Driver Inc. makes no sense for carriers, either



I got a call recently from a fellow who had Googled us and his first words to me were, “My boss wants me to incorporate. It looks like you guys can do that and look after my books for me.”

I said, “Do you own a truck?”

“No,” he said. “I just drive.”

I asked whether he’d seen my column in *Truck News* last month. It was about Canada Revenue Agency’s (CRA) decision to declare incorporated self-employed drivers as Personal Service Businesses, or PSBs.

I sent him a link and asked him to call me back after he’d read it.

As we start the new year, I’d like to think we can close the book on the issue of self-employed drivers, or driver services. I’ve said this is my last column about it, although that’s unrealistic, of course, because some form of Driver Inc. probably will never truly go away.

The CRA decision about PSBs means self-employed drivers are no longer allowed to claim any expenses other than payroll, and are also taxed at a much higher rate. Without those benefits, the arrangement has virtually no advantage for drivers.

But what about for the carrier? Well, let’s talk about Employment and Social Development Canada’s (ESDC) position on the matter.

In a letter to the Canadian Trucking Alliance (CTA), ESDC echoed its long-established guidelines about how it determines employer-employee status. It also said incorporation does not factor heavily into the determination of employer-employee status, and, as such, “Personal Service Business(es) would not have a special status under the Code.”

Got that? No special status.

According to ESDC, incorporated drivers operating company vehicles should get the same treatment under the law as employees with regard to pay for overtime, holidays, vacation, as well as termination and severance.

If you’re an incorporated driver, did you get vacation pay this year? Last year? You’re entitled to it. The basic 4% multiplied by your gross income over the last year or two is a lot of money.

What about “wages” for Christmas, Boxing Day, and other statutory holidays? There are nine or 10 of those, depending on where you live.

Did a carrier let you go, or fire you without cause or explanation? Did you not receive proper notice or termination pay? Did the carrier you work for short your pay for the miles you ran or not compensate you for time spent waiting for a load?

You don’t need to hire your own lawyer to go to battle over a payment dispute. Since you’re no different from an employee under the law, you can file a complaint with the Canada Labour Board. ESDC is prepared to investigate and enforce its interpretation of your status.

“While the Labour Program primarily encounters these cases based on individual complaints, we do conduct inspections in high-risk industries and would consider targeting businesses that operate using a Driver Inc. model if they can be

identified,” ESDC told the CTA.

If CRA’s policy on taxes and expense deductions is a showstopper for the incorporated driver, the ESDC position is a game-changer for the carrier. It absolutely makes things better for drivers, though, because now there’s no doubt that you’re covered by the Canada Labour Code.

When the driver called me back after reading last month’s column, he said, “I guess that’s the end of the road for the incorporated driver.”

I told him I wasn’t so sure.

Scott Taylor is vice-president of TFS Group, providing accounting, book-keeping, tax return preparation, and other business services for owner-operators. Learn more at www.tfsgroup.com or call 800-461-5970.

Carriers and drivers are already scrambling to find ways around the CRA and ESDC policies, including how to make the Driver Inc. look like Driver Lease Operator Inc.

So maybe this won’t be my last column on the subject. But it should be. **TN**