

## TAX TALK

# The long arm of WSIB

## Know your workers comp requirements

Last month, I wrote about Canada Revenue Agency's (CRA's) rules and guidelines regarding self-employed drivers. I discussed the basics of how CRA determines if a worker is really an employee.

Another group of government organizations is concerned about employee vs. self-employed status. And what complicates matters is that these agencies are provincially run. The rules are different in each province. I'm talking about worker compensation boards.

From WorkSafeBC in British Columbia to the Workers Compensation Board of Nova Scotia, provincial worker safety boards care very much about the employees and self-employed workers that any business in their province may deal with.

In Ontario's case, the Workplace Safety and Insurance Board (WSIB) doesn't separate the two statuses at all. Its new rules are so sweeping that almost everyone is potentially covered.

### Independence defined

Provincial worker safety or insurance boards provide workers with insurance should they get hurt at work. All employers must pay insurance premiums based on their total wages multiplied by a rate based on the claims experience



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for their industry.

Employers are not allowed to deduct the cost of this insurance from their employees. They can, however, deduct it back from sub-contractors.

In Ontario, owner/operators are treated as independent operators, for workplace safety and insurance purposes only, when the work relationship contains all the following features:

- The owner/operator pays for the truck and a majority of the equipment or other related property (fuel, maintenance, licence, etc.) and is not required to finance the truck and equipment-related property through company sources.

- The owner/operator has a choice in selecting and operating the vehicle and has market mobility – he can enter into contracts of any duration to transport goods and maximize profits.

- The carrier does not have the right to control where or from whom products or services are purchased by the owner/operator. Also, the carrier does not have the right to

exercise control over the owner/operator's operations except to the extent that loads are offered, and destinations and delivery schedules are established.

- The carrier and owner/operator state that the relationship is one of a contract for service and not that of employer and employee.

- The carrier does not issue a T4, T4A, or make statutory deductions for U.I.C. and/or C.P.P.

Independent operators are not automatically covered under WSIB but may elect to be considered "workers" and covered. If an independent operator chooses to be covered, he must obtain optional insurance in his own WSIB account and is responsible for paying for his own WSIB insurance.

Once they have optional insurance with the WSIB, independent operators and their dependents may lose their right to sue for damages resulting from a work-related accident. The amount of optional insurance selected must reflect the independent operator's annual earnings for labour.

### A real-life example

Consider this real-life example of a WSIB audit of a trucking company happening in Ontario right now.

The carrier, selected for an audit at random, uses owner/operators and has only a few trucks of its own. The auditor is not only evaluating the "independent operator" status of each owner/operator, he's checking each owner/operator to see if he has employees or sub-contractors.

An independent operator who employs his own workers or helpers is an "employer" under WSIB and must be registered.

Here's what's at stake: If you're a carrier and you hire an independent operator who in turn hires his own workers or helpers but does not register with WSIB, you may be held responsible for the operator's premiums and the cost of any injury that occurs while he's on the job.

If the independent operator registers but does not pay his premiums, you may be held responsible to pay them. If an owner/operator has employees, self-employed drivers (driver services), sub-contractors, or even a spousal wage and they are not registered, then WSIB can assess you, the carrier, for premiums.

Workers comp boards offer no rehab or therapy for busted bank accounts. If you're a carrier, it's your duty to ensure that any contractor you hire meets his obligations to register with WSIB by insisting on seeing a Certificate of Clearance each year.

If you're an owner/operator, be ready to prove that you're registered and your account is in good standing. □

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