

*So you're thinking of using independent operators*

*in your transportation business...*

Here's  
what you  
**MUST**  
know



# Here's what you MUST know

Hiring subcontractors and/or owner-operators is a common practice in the transportation industry. While at first glance the advantages of hiring a subcontractor or owner-operator may be appealing, the reality is there are many financial repercussions which could significantly impact your business.

A subcontractor or owner-operator may be a worker or an independent operator for WSIB purposes. Workers are automatically covered in the transportation industry and the principal is required to pay premiums for this coverage. On the other hand, WSIB coverage for independent operators is not mandatory.

Here are some things you should know before you hire an independent operator.

## What is an independent operator?

An independent operator is different from a regular employee or worker. An independent operator carries on a business, separate from the employer. Typically, an independent operator in the transportation sector will have the following characteristics:

- The owner-operator pays for the truck and the majority of the equipment or other related property.
- The owner-operator has a choice in selecting and operating the vehicle and has market mobility in that he/she has discretion to enter contracts of any duration to transport goods and maximize profits.

The WSIB uses an organizational test to determine if a subcontractor is an independent operator or a worker.

## What is the organizational test?

In the trucking industry, the WSIB's organizational test asks specific questions to confirm that the person qualifies as an independent operator for WSIB purposes. If both parties (the owner-operator and the firm using his/her services) agree that the five criteria outlined in the test are reflective of their work relationship, then the WSIB considers the owner-operator to be an independent operator for WSIB purposes.

In the courier industry, the WSIB has a specific questionnaire to address the work relationship between individuals engaged as couriers and firms that engage their services. Please note that individuals who are engaged as couriers and use bicycles or are "walkers" are considered workers of the firm that hires them and do not complete the courier questionnaire.

## What are an employer's obligations and responsibilities when using independent operators?

Both parties (the individual offering services and the firm thinking of hiring the person) are strongly encouraged to complete the organizational test prior to beginning a work relationship so that everyone is clear about each other's responsibilities and obligations under the Workplace Safety and Insurance Act. The test will determine whether:

- the person is an **independent operator** under the Act, and therefore not automatically covered for WSIB purposes. He or she has the option of opening an account with the WSIB and taking out voluntary coverage; OR
- the person is a **worker** under the Act and the company using his or her services is considered an employer and therefore responsible for the person's WSIB coverage.

# You have hired an independent operator and you assume you're off the hook.

## Not so because...

- An independent operator who employs his or her own workers/helpers is an employer and must be registered with the WSIB.
- If you hire an independent operator who hires his/her own workers/helpers but does not register with the WSIB, you as the principal may be held responsible for the operator's premiums and the cost of any injury.
- If the independent operator registers with the WSIB but does not pay his/her premiums, you as the principal may be held directly responsible for the independent operator's premiums.

In other words, it is the duty of the principal to ensure that the contractors working for you who are required to be registered with the WSIB are registered and remain in good standing with the WSIB. To ensure the contractor is in good standing, you must ask the contractor for a WSIB clearance certificate. A clearance certificate is a confirmation that an

employer is registered and has met his/her reporting and payment obligations.

**NOTE:** A clearance certificate is NOT proof that a person has WSIB optional insurance for him/herself. An independent operator who does not obtain optional insurance with the WSIB may sue the principal and any other person or company for negligence.

## Still confused? This is a real life situation. It could be YOU!

In the event of a work-related accident, a principal can be held responsible for independent operators who do not have coverage with the WSIB. The following examples illustrate why ensuring your independent operators have WSIB coverage is very important.

Company ABC Transportation Inc. hires John Small to haul produce from Ottawa to Thunder Bay using his own truck. Company ABC Transportation Inc. does not check if John has WSIB coverage. As it turns out, he doesn't. While transporting goods, John Small is seriously injured.

### **Example #1**

The WSIB is notified of the injury. The WSIB applies the organizational test and John is considered an independent operator. As an independent operator without WSIB coverage, John Small sues Company ABC Transportation Inc. for negligence and is successful. Company ABC Inc. is unable to pay the award imposed by the courts and goes bankrupt.



### **Example #2**

In a different case, John Small is a separate incorporated company and decides to subcontract some of the driving to Larry Black of Black's Driving Services. Larry Black is seriously injured while driving one of John Small's trucks.

The WSIB is notified of the accident and does not apply the organizational test as Larry does not own his own vehicle. Larry is considered a worker by the WSIB. As John Small hired and paid Larry, he is responsible for the WSIB costs. However, John Small did not register with the WSIB before Larry's accident. Consequently, John is fined by the WSIB.

Furthermore... Company ABC Transportation Inc. did not ask John for a clearance certificate to confirm that John is

registered with the WSIB and in good standing. Now, John cannot pay his WSIB bill. The WSIB has the authority to move the responsibility "up the chain" and collect from the principal (Company ABC Transportation Inc.) who initially hired John to do the work.

Company ABC Transportation Inc. failed to obtain a clearance certificate from John and can be held responsible for any money John may owe the WSIB. Section 141 of the Workplace Safety and Insurance Act addresses a principal's liabilities regarding a subcontractor's responsibilities and provides the capability for the WSIB to deem the principal to be the employer.

If you don't receive a clearance certificate, you may be held liable for other people's WSIB bills!

***Hiring independent operators means taking the time to understand the different ways it could affect your business.***

***This includes your WSIB obligations.***

***Be careful, make sure you're covered – it makes good business sense!***

For further information, please call our general inquiry line at  
**(416) 344-1013** or toll free **1-800-387-8638**.



**WSIB** Workplace Safety & Insurance Board  
ONTARIO  
**CSPAAT** Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail