



Ottawa ON K1A 0J9

OCT 10 2018

Mr. Stephen Laskowski
President
Canadian Trucking Alliance
555 Dixon Road
Toronto ON M9W 1H8

Dear Mr. Laskowski:

I am responding to your letter of July 3, 2018, as well as your subsequent correspondence of August 29, 2018, concerning the incorporation of drivers and whether this affects their employment status for the purposes of the *Canada Labour Code*, Part III. You characterized this arrangement as “Driver Inc.” or “Personal Service Business,” a term used by the Canada Revenue Agency.

As you know, Part III of the Code applies to employees working for a federal company where an employer-employee relationship is established. Guidance on how this is determined can be found in the Labour Program Interpretations, Policies and Guidelines (IPG) document titled “Determining the Employer/Employee Relationship – IPG-069,” which is available at www.canada.ca/en/employment-social-development/programs/laws-regulations/labour/interpretations-policies/employer-employee.html.

Of note is that whether or not a worker is incorporated does not factor heavily in a determination of employer-employee status. As such, Personal Service Businesses would not have a special status under the Code. However, having this status or being incorporated would normally require an inspector to conduct a full review of the relationship between the parties following the criteria outlined in the IPG. For ease of reference, we have completed an assessment based on the scenario you outlined in your initial correspondence to show the results of this analysis (see Annex A). In this case, we find that an employer-employee relationship exists and that the Code applies.

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While the Labour Program primarily encounters these cases based on individual complaints, we do conduct some inspections in high-risk industries and would consider targeting businesses that operate using a Driver Inc. model if they can be identified. In addition, we are working to improve guidance and information on our website to help clarify when an employer-employee relationship exists and when labour standards apply.

Your concerns have been noted and will be taken into consideration as we continue our efforts to modernize labour standards.

If you have any questions, please contact Ms. Nathalie Nadon, Manager of Labour Standards Compliance and Operations, at 819-654-4379.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'B. Baxter', with a large flourish extending to the right.

Brenda Baxter
Director General
Workplace Directorate
Labour Program
Employment and Social Development Canada

Enclosure: 1

Assessment of employer/employee relationship:

Criteria	Facts (as submitted by the Canadian Trucking Alliance)	Opinion of the Labour Program
Control	<ul style="list-style-type: none"> • The transporter decides on the work and assigns trips to the incorporated driver (Driver Inc.) • In most cases, the Driver Inc. cannot refuse to take these trips. • The Driver Inc. works solely for the transporter. • The Driver Inc. performs work under the management of the transporter. 	The transporter exerts control over the Driver Inc.
Ownership of the tools	<ul style="list-style-type: none"> • The trucks belong to the transporter. • The trailers belong to the transporter or to a third party who is not the Driver Inc. • Registration fees are paid by the transporter. • The trucks are insured by the transporter. • The transporter is responsible for repairs and maintenance. • The Driver Inc. is not authorized to make repairs or modifications to the trucks without the transporter's consent. 	The transporter is the owner of the tools.
Chance for profit and risk of loss	<ul style="list-style-type: none"> • The transporter establishes trip rates, the Driver Inc. cannot change them. • The transporter manages the pay system. • The Driver Inc. does not participate in the transporter's financing. 	The transporter has chances to make profits and assumes the risk of loss.
Integration	<ul style="list-style-type: none"> • No facts for this criterion. 	

Sent Via Email: Brenda.baxter@labour-travail.gc.ca

July 3, 2018

Brenda Baxter
Director General
Workplace, Labour Program
Employment and Social Development Canada
Gatineau, QC K1A 0J2

Re: Driver Inc.

Dear Brenda,

Background

Recently, a new business model has emerged in our industry. Known as 'Driver Inc', a number of drivers and carriers are now entering into agreements whereby drivers will incorporate themselves and will then sell their driving services to the carrier. What distinguishes this from owner-operators is that these drivers do not own, lease or operate a vehicle. They drive the carrier's vehicles and have no financial risk in their business with little to no opportunity for financial loss.

We raise this issue with the Labour Program, as we know that it is ESDC's responsibility to protect the policy goals of the Canada Labour Code. In turn, part of the CTA's mandate is to attempt to maintain a level playing field within the industry and to push for companies within our sector to raise the bar when it comes to labour relations.

CTA believes that ESDC should be aware that this model is becoming increasingly common in our industry. If action is not taken, we believe it will continue to spread at an accelerated pace. We must prevent this from happening.

Below is an example of what we mean when we describe a Driver Inc relationship. There are federally regulated companies out there today employing this exact model, CTA believes ESDC has a responsibility to investigate and take action should these companies be found to be in noncompliance.

Example for Consideration

ABC is a for-hire common carrier, having both "employees" driving its tractor-trailers and what it calls "Incorporated Drivers".

Mr. Smith has legally incorporated himself and is in a contractual relationship with ABC trucking that establishes him as an independent incorporated driver, and not an employee of ABC. ABC pays Mr. Smith as a contractor which includes HST. ABC does not pay for Mr. Smith's workers compensation, any overtime that might be due, or bear any other related costs that might be associated with a typical employee/ employer relationship.

Mr. Smith does not own or lease a truck and performs his duties under the sole direction of ABC in a truck that is owned by ABC. The trailers in which the goods are transported are also not owned by Mr. Smith and are either owned by ABC or some other third party.

ABC owns the license plate and pays to insure the truck. ABC is also responsible for the repairs and maintenance on the truck. Mr. Smith is not authorized to make any specific repairs or modifications to the truck without approval from ABC. ABC decides what work is to be performed and is responsible for

dispatching and setting up the loads. Mr. Smith, with few exceptions, cannot turn down loads and works as directed by ABC.

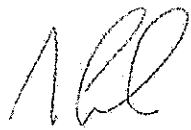
Mr. Smith does not work for any trucking company other than ABC. Mr. Smith is not responsible for the pay structure, with his pay and mileage rate being dictated by ABC. He cannot change the price for services as that is exclusively between ABC and their customers. Mr. Smith does not have any financial investment in ABC or the commercial vehicle he operates.

There is very little that distinguishes Mr. Smith from a regular employee. However, because Mr. Smith is incorporated, both he and ABC believe that is sufficient grounds to make him an independent contractor and not an employee.

Next Step

CTA respectfully requests that ESDC clarify its position on the Driver Inc model. Should it be useful, please feel free to use the above or a like example to illustrate how CTA and carriers should view independent contractor status and the so-called Driver Inc model.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Laskowski', written in a cursive style.

Stephen Laskowski
President