

Chapter DWD 105

RELATIONSHIP OF CARRIERS AND CONTRACT OPERATORS

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Note: Chapter ILHR 105 was renumbered Chapter DWD 105 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1997, No. 498.

DWD 105.001 Definitions. Unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter:

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; am. (intro.), renum (1), (2), (4) and (5) to 100.02 (8), (12), (38) and (56), r. (3), Register, September, 1995, No. 477, eff. 10-1-95.

DWD 105.01 Purpose. The purpose of this chapter is to establish standards for determining whether a contract operator performs services in an independently established business free from the carrier's direction or control so as not to be deemed an "employee" of a carrier under s. 108.02 (12), Stats.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85.

DWD 105.02 Requirements of shipper or law; department policy. In determining whether the carrier exercises direction or control and whether the contract operator is engaged in an independently established business, the department may not use as evidence any factor to the extent that it is specified by the shipper or required by state or federal laws or regulations. The department believes it is unreasonable to consider mandates of law or specifications of shippers as evidence because they have not been imposed on the relationship between the contract operator and the carrier by those parties of their own volition.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85.

DWD 105.03 Contract operators; direction and control. (1) The department shall examine the factors enumerated in this section to determine, both under contract and in fact, whether the contract operator is free from a carrier's direction or control, while the contract operator performs services for the carrier. The department shall determine whether:

(a) The contract operator owns the motor vehicle or holds the vehicle under a bona fide lease arrangement with any person other than the carrier;

(b) The contract operator is responsible for the maintenance of the motor vehicle;

(c) The contract operator bears the principal burden of the motor vehicle operating costs including such items as fuel, repairs, supplies, insurance and personal expenses while on the road;

(d) The contract operator supplies, or is responsible for supplying, the necessary personal services to operate the motor vehicle;

(e) The contract operator determines the details and means of performance, namely, the type of equipment, assignment of driver, loading, routes and number of stops to be made during the haul, as well as starting, completion and elapsed times;

(f) The contract operator may refuse to make a haul when requested by the carrier;

(g) The contract operator may terminate the lease at any time after reasonable notice; and

(h) The contract operator is compensated on a division of the gross revenue or by a fee based upon the distance of the haul, the weight of the goods, the number of deliveries, or any combination of these factors.

(2) If the department determines that all of the factors under sub. (1) (a) to (h) are present in the relationship between the contract operator and the carrier, the contract operator shall be deemed to be free from the carrier's direction and control in the performance of services under s. 108.02 (12) (c) 1., Stats. If one or more of the factors under sub. (1) (a) to (h) are not present in the relationship between the contract operator and the carrier, the department shall consider additional factors of the relationship, both under contract and in fact, including whether:

(a) The contract operator may negotiate with the carrier to determine the method, frequency and regularity of payments made to the contract operator;

(b) The contract operator has the authority to discharge any driver whom he or she employs;

(c) The carrier requires decals, lettering, signs, emblems or other markings on the contract operator's motor vehicle for the purpose of advertising the carrier's name or business;

(d) The carrier requires the contract operator to submit reports;

(e) The carrier requires the contract operator to obey any work rules or policies; and

(f) The carrier requires any deductions from payments owing to the contract operator for federal or state income taxes or taxes under the federal insurance contributions act.

(3) If the contract operator is found to be under the carrier's direction or control under subs. (1) and (2), the contract operator shall be deemed to be an employee of the carrier under s. 108.02 (12) (c) 1., Stats.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 07-009; am. (2) (intro.) and (3) Register June 2007 No. 618, eff. 7-1-07.

DWD 105.04 Contract operators; independently established business; customarily engaged. (1) If the department determines that a contract operator is free from a carrier's direction or control in the performance of services under s. DWD 105.03, the department shall examine the following factors to determine whether a contract operator who performs services for a carrier is performing these services in an independently established business in which the contract operator is customarily engaged. The department shall determine whether:

(a) The contract operator owns the motor vehicle or holds the vehicle under a bona fide lease arrangement with any person other than the carrier;

(b) The contract operator is free to hire another person as a driver in the performance of services for the carrier; and

(c) The contract operator is free to reject hauling a load offered by the carrier.

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(2) If the department determines that all of the factors under sub. (1) (a) to (c) are present in the relationship between the contract operator and the carrier, the contract operator shall be deemed to be performing services in an independently established business in which the contract operator is customarily engaged under s. 108.02 (12) (c) 2., Stats. If one or more of the factors under sub. (1) (a) to (c) are not present in the relationship between the contract operator and the carrier, the department shall consider additional factors including whether:

(a) The contract operator's business may provide a means of livelihood that is separate and apart from the livelihood gained from services performed for a particular carrier;

(b) The business would continue if the relationship with the carrier were terminated; and

(c) The contract operator has an ownership interest in a business that the contract operator alone may sell or give away without restriction from the carrier.

(3) If the contract operator is found to be free from the carrier's direction or control but not engaged in an independently established business under subs. (1) and (2), the contract operator shall be deemed to be an employee of the carrier under s. 108.02 (12) (c) 1. and 2., Stats. If the contract operator is found to be free from the carrier's direction or control and engaged in an independently established business, the contract operator shall be deemed to be an independent contractor and not an employee of the carrier under s. 108.02 (12) (c) 1. and 2., Stats.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 07-009: am. (2) (intro.) and (3) Register June 2007 No. 618, eff. 7-1-07.