



Using Independent Contractors:

A Guide to IRS and Insurance Guidelines

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About this guide

This guide is designed to provide you with information regarding the IRS classification of independent contractors and insurance guidelines developed to help protect against claims that could arise from hiring uninsured independent contractors.

The use of independent contractors in the moving industry has increased over the past several years. Our goal is to ensure that you have an insurance program that aligns with the specific needs of your business, and to have an understanding of the IRS classification of workers as independent contractors.

Hiring independent contractors poses several specific risks to your transportation business. Not having the proper contract in place can result in unpaid insurance claims or tax audits, which can be devastating. In addition, tort liability claims can be adversely construed against them.

In this guide you will find:

- Definition of an Independent Contractor and Evidence of Proper Insurance
- Insurance requirements to be included in contract
- Sample – Independent Contractor insurance requirements
- Moving & Storage Weblinks

Defining an independent contractor and evidence of proper insurance

Knowing your exposure

To truly understand the exposure of using independent contact drivers, it is important to understand the continued controversy surrounding the classification of workers as independent contactors or employees. Reviewing the 20 factors the IRS uses to make this classification determination is key to knowing your exposure.

If a worker is an independent contractor, the employer need not withhold income or payroll taxes, nor pay the employer's portion of FICA taxes. Also, health insurance and other employee benefits generally need not be provided.

In recent years, a greater number of businesses started to feel the crunch of the recession. These businesses began to treat workers as independent contractors. With the simultaneous reduction in state tax base there has been an increase in state and federal audits on this issue. The IRS has come down, targeting the following industries: health care, trucking, construction, messenger services and the companies that tend to use professional consultants.

In light of the IRS crackdown, it is vital that companies considering classifying workers as independent contractors first seek professional advice from their accountant, insurance broker and attorney.

20 IRS factors

These factors are used by the IRS to determine whether a recipient of services has enough control over a worker to be an employer. They are intended only as a guide to help determine whether there is sufficient control to show an employer-employee relationship. Answering "Yes" to ANY of the first 16 factors tends to indicate the person would not meet the IRS standard of being an independent contractor. The IRS indicates that the importance of each factor depends on the facts and circumstances of a particular case, and on the industry and type of service being provided.

1. **Instructions.** Do you have the right (whether or not exercised) to make the worker comply with your instructions on when, where and how he or she must work?
2. **Training.** Do you train a worker (on your premises or the worker's) by requiring him or her to work with someone experienced, or by having him or her attend meetings or via correspondence?
3. **Integration.** Are the worker's duties an integral part of your operation? Is the worker's function necessary to your business?

In light of the IRS crackdown, it is vital that companies considering classifying workers as independent contractors first seek professional advice from their accountant, insurance broker and attorney.

The IRS is specifically looking to affirm that contractors have a significant investment in their business and have the opportunity to realize the profit or loss in their operations.

4. **Services rendered in person.** Do you require the worker to provide the services personally, or can he or she delegate them to someone else?
5. **Hiring/firing.** Do you hire, fire and pay the worker's assistants? (If the worker contracts to provide both labor and materials, and is responsible only for the ultimate product, this tends to show independent status.)
6. **Relationship.** Is there a continuing relationship between you and the worker? Are services performed frequently (although irregularly)?
7. **Hours.** Do you set hours during which the individual must perform the work?
8. **Full time.** Must the worker devote all of his or her time to your job? (Independent contractors can work when and where they please.)
9. **On premises.** Must the worker work on your premises, especially if the work could be performed elsewhere? (do you have the right to designate travel routes?) The IRS says that the absence of this factor does not necessarily negate an employee relationship.
10. **Ordering.** Do you have the right to set the order in which services are performed, whether or not you exercise that right?
11. **Reports.** Do you require the worker to give written or oral reports?
12. **Hourly, weekly or monthly pay.** Do you pay the person by the hour, week or month? (A worker might still be an independent contractor and be paid on this basis. Contractors tend to be paid by the job or on straight commission, but could be paid monthly or weekly so as to spread out contract payments.)
13. **Expenses.** Do you pay the worker's business or travel expenses?
14. **Tools and materials.** Do you provide the worker with tools or materials?
15. **Right to fire.** Do you have the right to fire the worker? There can be a tricky distinction between controlling workers via the threat of firing if they do not follow your instructions – which would indicate employee status – and having the right to terminate a contract because the contractor has not performed according to specifications.
16. **Worker's right to terminate.** Can the worker quit at any time? Remember, answering "Yes" to the rest of the questions tend to show independent contractor status for a worker and are often the top four items the IRS is looking for when determining whether someone is a contractor.

The IRS is specifically looking to affirm that contractors have a significant investment in their business and have the opportunity to realize a profit or loss in their operations. The following questions are important to be able to substantiate a yes answer.

17. **Investment.** Does the worker have a significant investment in equipment or facilities that are not typically maintained by employees?

18. **Profit or loss.** Can the worker incur a profit or loss as a result of his or her work (in addition to the profit of payment for the work?) A contractor should bear an economic risk over and above the risk of not being paid.
19. **More than one job.** Does the worker work for more than one business at a time? (Note, however, that the IRS says that a worker could be an employee of numerous service recipients.)
20. **Services available to general public.** Does the worker offer services to the general public on a regular basis?simple written record for the files. The application form should require the applicant's signature to authorize the checking of work references and motor vehicle records.

A final note: A provision of federal law may, under certain limited circumstances, provide relief from withholding responsibility in cases where a business has consistently treated workers as independent contractor. That provision is Section 530 of the Revenue Act of 1978. If all of its requirements are met, a worker will not be treated as an employee for withholding purposes – even if the worker would be classified as an employee under the IRS's 20-factor test. (Tax letter, Third quarter 1993)

Insurance requirements to include in your contract

Occupational accident vs. workers' compensation

One aspect in deciding what insurance you should require from your contract drivers comes from understanding the difference between an occupational accident insurance product versus workers' compensation coverage.

Typically, an occupational accident coverage policy offers three components: accidental death and dismemberment, accident medical and accident disability. The coverage is not a general medical or health policy, but rather a specific cause-and-effect policy triggered by an accidental injury that occurs in the course of an insured driver's work. That would include injuries sustained in an accident while en route to a delivery or in slip-and-fall incidents in the course of the driver's duties. Workers' compensation coverage is required by state law to provide benefits to employees who become ill or injured on the job. The actual insurance policy coverage is defined by each individual State Department of Insurance.

The better occupational accident policies will pay medical benefits for up to two years from the date of covered injury, subject to the policy limits.

The major difference between these two alternatives is the coverage provided and the cost. Occupational accident coverage provides a less expensive alternative, but also provides limited protection. There are several differences between workers' compensation and occupational accident policies. Generally speaking, in the event of work-related accident, there is no limit on the period for which workers' compensation policies pay until the worker is able to return to work (could be 10 months or 10 years). The better occupational accident policies will pay medical benefits for up to two years from date of covered injury subject to the policy limits. The benefits paid to survivors under workers' compensation are also more extensive in most states when compared to occupational accident.

Another element that needs to be addressed is the importance of understanding statutory workers' compensation coverage for helpers versus occupational accident compensation products. Today, there are occupational accident insurance products available for helpers which have the same limitation as explained above for the contract driver. However, at least 42 states require statutory workers' compensation coverage on employees. If an independent contractor does not carry true statutory workers' compensation for their helpers and instead has an occupational accident product, then they have not met the Labor Code requirement of an employer in their resident state. In the 42 states that require this coverage, the contractor will fail the state tax audit on this issue alone. Additionally, the underinsured helper of the contractor can then come back against their employer for their workers' compensation claim.

Contingent liability

Contingent liability is key element that is needed when a motor carrier allows contract drivers the ability to provide occupational accident coverage as a work injury protection solution. In the event a contractor sues a motor carrier to obtain employee status, this insurance policy covers and legally defends the named motor carrier, should an owner-operator be deemed an employee. If an owner-operator is deemed an employee, contingent liability insurance responds to cover losses from on-the-job injuries, relieving the corporate workers' compensation policy of this load.

Contingent liability insurance benefits motor carriers by providing insured drivers with standard benefit levels, which may be specified amounts or equivalent to statutory workers' compensation coverage.

Many contingent liability programs have a specified limit in lieu of statutory workers' compensation benefits and many do not extend the contingent liability policy to the helpers of the contractor.

Contingent liability insurance benefits motor carriers by providing insured drivers with standard benefit levels, which may be specified amounts or equivalent to statutory workers' compensation coverage.

General liability

General liability coverage for a contract driver is when negligent acts and/or omissions result in bodily injury and/or property damage on the premises of a business or customer's home, when someone is injured as the result of using the product manufactured or distributed by a business, or when someone is injured in the general operation of a business. It is recommended that all contract drivers provide general liability coverage that names the motor carrier, its officers and employees as additional insured as well as a waiver of subrogation endorsed to the policy in favor of the motor carrier.

Cargo legal liability

The motor carrier and the independent contractor need to determine what limitation will be required if a moving customer has a cargo claim. We recommend the contract driver provides his own cargo legal liability policy that will provide coverage when such event occurs when operating under the authority of your company. The other alternative is to have the motor carrier provide coverage through their insurance policy and charge back a premium. In this scenario we recommend a minimum deductible limit that the contract driver will be responsible for on each claim.

Primary auto liability

It is recommended the contractor needs to provide auto liability coverage for bodily injury and property damage, liability and auto contractual liability covering all motor vehicles and trailers used or operated by the contract driver while operating under the dispatch of your company. A secondary alternative is to have the motor carrier provide coverage for auto liability on their own policy for the contract driver while under dispatch. The motor carrier would charge back a premium to the contract driver for providing coverage.

Non trucking liability

Non-trucking liability (NTL) insurance provides coverage in case a contract driver causes an accident while using a vehicle for non-business or personal use other than transporting goods or merchandise. Non-trucking liability coverage does not apply when they are pulling a loaded trailer, operating on behalf of a motor carrier/leasing company, or using a vehicle for any revenue generating purpose. These types of activities are covered by primary liability coverage. If a motor carrier is providing primary liability coverage, their coverage will not apply when the contract driver is not under dispatch and the contractor will need non-trucking liability coverage.

Non-trucking provides protection for:

1. The owner-operator, for liability when driving the tractor while not in the business of trucking;
2. The motor carrier, from liability when a permanently leased contract driver is not under dispatch.

Sample – Independent contractor insurance requirements

{Independent Contractor Insurance Requirements Sample provided below. This document should be reviewed with both broker and attorney; modifications for particular risk management needs must be made.}

INSURANCE: CONTRACTOR shall at his expense, obtain and maintain the following insurance covering all operations and transportation services to be provided under this Independent Contractor's Agreement. These policies will not be qualified as acceptable or in compliance with these requirements unless the insurance company issuing the policies containing all provisions noted below is rated by Best's as A- or higher and has an adjusted policyholder's surplus of \$20,000,000 or higher. Copies of all policies, certified to be true and complete by an insurance company employee, must be sent to and kept on file with the Finance Department COMPANY. If acceptable evidence of insurance as outlined below is not provided to COMPANY within thirty (30) days of effective date, COMPANY will procure the required coverage and collect the applicable premiums through deduction from the CONTRACTOR statement account and remit to the insurance carrier from which such coverage was obtained:

A. Workers' Compensation Insurance/Employer's Liability

Workers' compensation insurance shall be provided as required by state law or by any other applicable workers' compensation law or regulation and shall cover, in accordance with the law, injury sustained by or benefits due the CONTRACTOR'S employees. Employer's liability insurance shall be provided in an amount not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 policy limit for bodily injury by disease, and \$1,000,000 each employee for bodily injury by disease. COMPANY must be granted 30 days' notice of cancellation or nonrenewal; such notice is to be sent to COMPANY ADDRESS. Coverage for all employees must be provided in all states, in addition to providing the statutory coverage of the CONTRACTOR'S state of domicile. All coverage will be endorsed to reflect that coverage applies employees of the CONTRACTOR (sole proprietor) in addition to his employees (including casual labor). Policy will be endorsed with Alternate Employer Endorsement naming COMPANY. Should the contractor elect to exclude himself for coverage under any applicable and allowable state statute for sole proprietors, partners, or corporate officers CONTRACTOR will procure occupational accident coverage for himself with a minimum limit of \$1,000,000 Medical, \$450 per week TTD and TD and \$250,000 death benefit. A contingent liability policy will be afforded to protect COMPANY indicating that statutory workers' compensation benefits will apply to COMPANY and applicable defense limits to defend company against allegations of the CONTRACTOR or their employee's are those of the company. The employer's liability insurance shall be included and provided in an amount not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 policy limit for bodily injury by disease, and \$1,000,000 each employee for bodily injury by disease. COMPANY must be granted 30 days' notice of cancellation or nonrenewal; such notice is to be sent to COMPANY ADDRESS.

B. Auto Liability Insurance

Such insurance shall include coverage for bodily injury and property damage, liability and auto contractual liability covering all motor vehicles and trailers or semi-trailers (including company's trailers or semi-trailers) used or operated by or for the CONTRACTOR under this Independent CONTRACTOR'S Agreement.

The limit of liability shall not be less than \$1,000,000 each accident for bodily injury and property damage combined for intrastate operations and \$1,000,000 each accident for bodily injury and property damage combined for interstate operations. Policies must contain no mileage limitations to any vehicles insured and must provide "fleet automatic" coverage. Uninsured Motorist coverage equal to the minimum requirements of the CONTRACTOR'S state of domicile must be carried. All no-fault coverages required of the CONTRACTOR'S state of domicile, including but not limited to Personal Injury Protection (PIP) and Personal Property Insurance (PPI), must be carried. Policy will be endorsed providing primary coverage to COMPANY with endorsement CA 2312 or its equivalent.

Additional Insured: Company, its officers and employees shall be named as additional insured under CONTRACTOR'S auto liability insurance policy; such coverage must apply to all operations of the CONTRACTOR, including situations where the CONTRACTOR is hauling under the operating authority of COMPANY. Such notice is to be sent to COMPANY ADDRESS.

Notice of Cancellation: COMPANY must be granted 30 days' notice of cancellation or non-renewal, such notice is to be sent to COMPANY ADDRESS.

C. Trailer Interchange coverage

Trailer interchange coverage providing physical damage coverage for Company's trailers or semitrailers shall be provided for a limit not less than \$45,000.

Additional Insured: Company, its officers and employees shall be named as additional insured under CONTRACTOR'S auto physical insurance policy; such coverage must apply to all operations of the CONTRACTOR, including situations where the CONTRACTOR is hauling under the operating authority of COMPANY. Such notice is to be sent to COMPANY ADDRESS.

Notice of Cancellation: COMPANY must be granted 30 days' notice of cancellation or non-renewal, such notice is to be sent to COMPANY ADDRESS.

D. Cargo Liability insurance

Cargo insurance shall be provided in an amount no less than \$50,000 each truck or each shipment. Coverage needs to include the operations of COMPANY including COMPANY bill of lading.

Additional Insured: Company, its officers and employees shall be named as additional insured under CONTRACTOR'S cargo liability insurance policy; such coverage must apply to all operations of the CONTRACTOR, including situations where the CONTRACTOR is hauling under the operating authority of COMPANY. Such notice is to be sent COMPANY ADDRESS.

Notice of Cancellation: COMPANY must be granted 30 days' notice of cancellation or non-renewal, such notice is to be sent to COMPANY ADDRESS.

E. General Liability insurance

CONTRACTOR shall carry general liability insurance including coverage for:

1. Premises and Operations
2. Products and Completed Operations
3. Contractual liability insuring the obligations assumed by Contractor in this Agreement.

The Limit of Liability: shall not be less than a combined single limit for bodily injury and property damage of :

\$1,000,000 each occurrence

\$1,000,000 aggregate

Additional Insured: Company, its officers and employees shall be named as additional insured under Contractor's general liability insurance policy; such coverage must apply to all operations of the Contractor, including situations where the Contractor COMPANY ADDRESS. A waiver of subrogation in honor of COMPANY will be endorsed to the policy.

Notice of Cancellation: COMPANY must be granted 30 days' notice of cancellation or non-renewal, such notice is to be sent COMPANY ADDRESS.

F. Off-dispatch/Non-trucking Liability (Bobtail)

CONTRACTOR shall carry a minimum limit of \$1,000,000 CSL for off-dispatch/Non-trucking liability (Bobtail). Uninsured motorist coverage equal to the minimum requirements of the driver's state of jurisdiction must be carried. All no fault coverages required of the driver's state of jurisdiction, including but not limited to Personal Injury Protection (PIP) and Personal Property Insurance (PPI), must be carried.

Additional Insured: Company, its officers and employees shall be named as additional insured under CONTRACTOR'S off-dispatch/Non-Trucking liability insurance policy; such coverage must apply to all operations of the CONTRACTOR, including situations where the CONTRACTOR is hauling under the operating authority of COMPANY. Such notice is to be sent COMPANY.

Notice of Cancellation: COMPANY must be granted 30 days' notice of cancellation or non-renewal, such notice is to be sent COMPANY ADDRESS.

Last Mile Delivery program

Last Mile Delivery Program is a comprehensive insurance program that offers nationwide specialty insurance coverage for furniture and appliance delivery companies and their independent contractors.

The goal of this program is to provide an efficient risk management system and to maintain DOT and insurance compliance for the company driver fleet, as well as the contractor fleet.

Last Mile Delivery Program offers:

- Workers' compensation coverage in all states.
- Individually issued comprehensive insurance policies for contractors and the motor carrier
- All coverage with one insurance carrier
- Individual contractor insurance selection
- Monthly List Bill for both corporate and independent contractors
- Access to a team of loss control transportation specialists
- Custom-designed online insurance administration tool with 24/7 access

The goal of this program is to provide an efficient risk management system and to maintain DOT and insurance compliance for the company driver fleet, as well as the contractor fleet.

Appendix – Helpful Web Resources

Moving & Storage Links

Below are some Web sites that provide useful information geared toward the moving and storage industry:

AMSA – www.promover.org

International Association of Movers – <http://www.iamovers.org>

Household Goods Forwarders Association of America –
<http://www.moverworldwide.com/HHGFAA.htm>

Department of Transportation – <http://www.dot.gov/new/index.htm>

Surface Deployment and Distribution Command (SDDS) –
<http://www.sddc.army.mil/who/default.aspx>

US General Services Administration – <http://www.gsa.gov/portal/category/100000>