

## Truck Owner-Operators: Employees or Independent Contractors under Illinois Workers Compensation Act?

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An owner-operator is injured while hauling a load. The contract with the trucking carrier expressly states that the owner-operator is an independent contractor. But, the owner-operator files a workers' compensation claim against the carrier. Is he an employee or an independent contractor? The Illinois Workers' Compensation Commission is in no way bound by the terms of a contract between an owner/operator and a motor carrier. In practice the Commission gives little weight to the contractual designation of an owner-operator as an independent contractor. The analysis undertaken by the Workers' Compensation Commission in Illinois courts is much broader.

The issue of whether an owner/operator is an employee or independent contractor turns on the evidence as to the *control* over the owner/operator's work. In determining whether the owner/operator is an employee, the Commission and courts weigh several factors in their analysis, including: ownership of equipment, nature of the work, skill required to perform the work, differences of payment and income tax withholding, supervision and direction of the work (including dispatch), right to discharge, right to termination of contract, and lastly terms of the agreement or contract between the owner/operator and trucking company.

Decisions by the Illinois Appellate Courts led to conflicting decisions despite substantially similar facts. In *Earley v. Industrial Commission*, 197 Ill. App. 3d 309 (4th Dist. 1990), an owner-operator under a lease to the respondent trucking company was deemed to be an independent contractor for workers' compensation purposes. The court found that the owner-operator was able to hire his own help to unload the truck if necessary, owned and maintained the truck, was designated as an independent contractor under the lease, was paid a percentage of gross revenue, paid his own taxes, and was responsible for ownership and maintenance of the tractor. Although the lease designated the owner/operator as an independent contractor, it also provided that the respondent would have "exclusive use and control of the equipment" – language required by the Interstate Commerce Commission. The court concluded that the driver was an independent contractor and the respondent trucking company was not responsible for workers' compensation benefits.

In *Ware v. Industrial Commission*, 318 Ill. App. 3d 1117 (1st Dist. 2000), by comparison, the petitioner Ware was an employee. The court concluded that the control exercised over Ware by the respondent Superior Trucking Company was sufficient to conclude that an employment relationship existed for purposes of workers' compensation benefits. Ware owned his own tractor, however tanker trailers

were provided by Superior. Ware was required to have a pump on his tractor. Like the *Earley* case, the lease agreement between Ware and Superior designated Ware as an independent contractor. He was also paid a percentage of revenue and Superior did not withhold taxes. Ware paid for the expenses associated with operating his truck and could even hire others to operate it, but only with Superior's permission. Superior provided insurance for the tractor and would charge back the cost. Additional factors in favor of a finding that Ware was an employee included – Ware could not perform any trucking services for any other business, he received load instructions from Superior, he was prohibited from having passengers, and Superior occasionally provided suggested routes. In addition, Ware and Superior split the costs of cleaning the tankers. The court placed high emphasis on facts illustrating that Superior had a right to discharge beyond simply terminating the contract. The court found that Ware was an employee entitled to workers' compensation benefits from Superior.

In *Roberson v. Industrial Commission*, 225 Ill. 2d 159, (2007), the Illinois Supreme Court addressed the issue. The Supreme Court analyzed the employee-independent contractor issue utilizing many of the same factors applied in the *Earley* and *Ware* cases. In addition, however, it placed emphasis on evidence that the owner-operator was performing a continuous service for the respondent Roberson, which was an integral part of the employer's business. They noted that the owner-operator's work fell entirely within the scope of the Robertson's trucking business. Additional evidence weighed by the court included the following: the owner-operator was responsible for all costs and expenses, was required to maintain his equipment in compliance with applicable law, and had the opportunity to trip lease, but had to notify Roberson if he had a desire to work for someone else. The contract designated that no employee relationship existed and that Roberson would not exercise control over the owner-operator except with respect to the "results to be obtained." Either party could terminate the contract at any time, and the owner/operator was not required to report at any specific time each day, but was required to call in to report his status. He had the option of purchasing insurance through Roberson at a reduced rate. He was compensated based on a percentage of gross revenue and was required to maintain workers' compensation coverage for himself and his employees. Roberson required the owner/operator to maintain a log book and also kept a personnel file on the owner/operator. In addition, Roberson exercised control by conducting annual reviews of its drivers. Roberson also required that owner/operators report any accidents and provided its drivers with cameras to photograph any damage if an accident occurred. The court noted that the contractual designation of the owner-operator as an independent contractor was not dispositive. The Supreme Court concluded that an employment relationship existed for purposes of workers' compensation benefits.

These cases illustrate the great care that must be taken when trucking companies deem owner/operators as independent contractors and do not maintain workers' compensation insurance for them. Contracts with owner/operators must be drafted very carefully, particularly with regard to the right of discharge and the degree of control vested with the trucking company. In addition to trucking companies divesting themselves of control of owner/operators in the contract document, it is equally important that actual job site control is not unduly exercised over the owner/operators such that employer/employee relationship is created under the workers' compensation standard.

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