CANADIAN TRUCKING ALLIANCE
MEMO

Canadian Trucking Alliance
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"Driver Inc."

Introduction

A new employment trend has emerged in the trucking industry that breaks radically with traditional employee and owner-operator models. 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 them from owner-operators is these drivers do not own, lease or operate a vehicle. They drive the carrier's vehicles and have little to no financial investment in their business with little to no risk for financial loss.

Motivation

While each company could organize things slightly differently, the basic process is:

- Driver is incorporated.
- Driver brings no assets and has zero risk or investment (fails the independence test completely).
- Employer makes no source deductions, e.g. EI, CPP.
- Provincially, good chance workers comp (WSIB or alternative) is not being paid by anyone.
- Driver likely claims for small business tax deductions that are not entitled to.

The Canadian Trucking Alliance (CTA) estimates that companies can achieve up to $15,000/ year in saving per employee.

Impact on Industry

The labour market in the trucking industry is as tight as it's been in decades, or perhaps ever. Companies that employ this Driver Inc model have used these savings to attract more drivers with higher mileage rates. While on the surface, this might sound good for many drivers, it's also very short sighted and leaves the driver exposed to tax, labour code, and workers compensation liabilities. In other cases, some carriers are purposefully misinforming drivers and leading them to believe this model is their best or only choice for employment.

Example for Consideration

To illustrate how the scheme works: ABC Trucking 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 contractor, and not an employee. 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 licence 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 prior 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.

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 the rate is exclusively between ABC and its 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 to make him an independent contractor and not an employee.

Consequences

CTA believes the driver described above does not meet the traditional independence criteria, that, for example, the WSIB, MOL, ESDC or CRA would use to establish independent contractor status. Nonetheless, there are numerous companies and likely thousands of drivers in Canada that are currently operating under this model. The longer it keeps going unchecked, the more it's likely to spread throughout the industry. This year, 2019, appears to be a watershed moment for the industry. It is CTA's fear this will become the predominant model in our industry if action isn't taken. Compliant carriers have indicated they are no longer able to compete against established Driver Inc companies. Governments at all levels should also be concerned. For the CRA, there are obvious tax implications and leakages. From a labour perspective – whether provincially regulated, federally regulated or WSIB – there are employees that are clearly being taken advantage of in Canada. CTA believes governments have a responsibility to look into this phenomenon wherever they have jurisdiction and to take immediate action.