

NEW YORK STATE DEPARTMENT OF LABOR  
GOV. W. AVERELL HARRIMAN STATE OFFICE BUILDING CAMPUS  
ALBANY, N.Y. 12240

**GUIDELINES FOR DETERMINING WORKER STATUS:  
VAN OPERATORS IN THE MOVING INDUSTRY**

The following are guidelines used by the Unemployment Insurance Division, the Division of Labor Standards and the Division of Safety and Health to establish whether the relationship between a van operator and the party engaging the services is an employment relationship or that of an independent contractor.

Independent contractors are excluded from coverage under the Unemployment Insurance Law and are not afforded certain protections provided by Labor Standards and Safety and Health law. These are persons who are actually in business for themselves and hold themselves available to the general public to perform services. A person is an independent contractor only when free from control and direction in the performance of services. All factors concerning the relationship between the two parties must be taken into consideration to determine if the party contracting for the services exercises, or has the right to exercise supervision, direction or control over the van operator. No one single factor is controlling, nor do all factors need to be present to establish the nature of the relationship.

A van line is a carrier authorized to carry household goods intrastate and/or interstate. A local independent household goods mover is a carrier that is not affiliated with a van line, and authorized to carry household goods intrastate and/or interstate. An agent is a local carrier authorized under contract, including a franchise, to provide transportation services for a van line.

For the purposes of these guidelines, the term "van operator" is the driver of a vehicle that transports household goods. The term "van operator" applies to a driver who operates under a written agreement with either the carrier or an agent that specifies the van operator will provide the company with services and equipment. Equipment must include a "power unit", or tractor used to pull a trailer or a truck capable of carrying household goods. Equipment may, but is not required to, include a trailer.

Employers may request a formal determination of the status of individuals performing services for unemployment insurance purposes by writing to the Liability and Determination Section and furnishing complete details of the relationship. An employer who assumes an individual performs services as an independent contractor and does not report and pay taxes based upon the assumption, may find they are subject to a retroactive assessment, interest, or penalty, if it is later determined through an audit, benefit claim or some other review, that there was an employment relationship. Therefore, it is to the employer's advantage to request a determination when the status of van operators is in question.

The Department of Labor is implementing these guidelines with an effective date of January 1, 2001. Therefore, employers may discontinue reporting individuals for unemployment insurance purposes where the application of the guidelines results in a status of independent contractor as of January 1, 2001. Please note the prospective nature of the implementation. As a result, the Unemployment Insurance Division will not issue redeterminations and refunds for previously reported individuals.

Employers with questions regarding the interpretation or application of the “indicators” outlined in the guidelines in relation to an unemployment insurance matter may contact the Liability and Determination Section at (518) 457-2635. Employers with questions in relation to a Division of Labor Standards issue should call (518) 457-4321. Division of Safety and Health issues may be referred to (518) 457-1212.

I. FACTORS INDICATING THAT A VAN OPERATOR IS AN INDEPENDENT CONTRACTOR

1. The van operator may own or lease the power unit, i.e., a truck capable of carrying household goods, or a tractor capable of pulling a trailer containing household goods.

A lease must have evidence of a substantial investment by the van operator such as:

- The lease is for a fair market value.
- It is for a minimum period of at least 1 year.
- The van operator is obligated to satisfy the terms of the lease even if the relationship is discontinued.
- There is a reasonable interest rate.

2. There is a written agreement or agreements between the van operator and the company /1 stipulating that:

- a. The van operator will provide the company with services and power equipment;
- b. The van operator’s remuneration is based on a percentage of revenue collected on individual shipments or per mile compensation for miles driven;
- c. The van operator will pay a substantial majority of business and traveling expenses including: the repair, maintenance and inspection of his power equipment, fuel, oil, insurance, tolls, and the cost of food and lodging while on the road.

3. The van operator may choose either to accept or reject shipments/jobs the company offers.
4. The van operator is not required to render services to the company personally, but may use qualified substitute drivers. The company may determine if a driver is qualified.
5. The van operator may use discretion to decide whether to hire helpers to assist in the performance of packing, loading, and unloading services, can select such helpers as necessary, and is solely responsible for compensating them and for withholding and remitting taxes owing on their compensation.
6. The van operator is free to haul shipments for other agents of the affiliated van line and for other entities as permitted by government regulations.

/1 When used herein, “company” refers to a carrier or agent that has engaged the van operator’s services.

7. The work schedule may be set by the van operator. The fact that the van operator must comply with federal or state limitations on driving hours, or that the van operator is required to pick up and deliver shipments within reasonable time periods, consistent with customer expectations, industry practice, and federal regulations, will not be considered as infringing on the right to determine his or her own work schedule.
8. The van operator is free to determine the manner and means and details of the services to be rendered, free from control by the company. The fact that the van operator is required to comply with federal or state governmental rules and regulations applicable to the household goods moving industry, such as vehicular and driver safety standards, or that the van operator will be expected to adhere to general quality standards within the industry, such as courtesy and professionalism, will not be regarded as indicating control by the company.

## II. FACTORS INDICATING THAT A VAN OPERATOR IS AN EMPLOYEE

1. The van operator operates power equipment owned or leased, and maintained and insured by the company.
2. The van operator is paid by the hour, or receives some other type of fixed salary or wage, from which employment taxes are withheld, and is issued a Form W-2 by the company with respect to yearly earnings.
3. The van operator is required to render services to the company personally.
4. The van operator is required to attend company meetings.
5. The van operator must follow the directions of company management as to what shipments the van operator may handle for other agents of the affiliated van line.
6. The van operator cannot refuse pick-ups and deliveries as assigned by the company's dispatchers.
7. The van operator must use helpers employed and assigned by the company.
8. The van operator is covered under the company's workers' compensation insurance.
9. The van operator receives fringe benefits (e.g. paid holidays and vacation periods) and is covered by company provided or sponsored medical insurance, life insurance, retirement, 401(k), etc., plans.
10. The van operator is a party to a collective bargaining agreement with the company.
11. The company pays or reimburses the van operator for routine business and travel expenses, or the van operator is eligible for a per diem payment while on the road.
12. The agent places requirements on the van operator to wear uniforms or other identification beyond the requirements of the van line or federal/state regulation; or

- 12.a. The independent household goods carrier places requirements on the van operator to wear uniforms or other identification beyond the requirements of federal/state regulation.
- 13. The agent requires the van operator to paint the power equipment to specifications over and above federal/state regulations or the specifications of the van line; or
- 13.a. The independent household goods carrier requires the van operator to paint the power equipment to specifications over and above federal/state regulations.

III. NEUTRAL FACTORS THAT ARE NEITHER INDICATIVE OF EMPLOYEE NOR INDEPENDENT CONTRACTOR STATUS

- 1. Van operators and helpers are required by the agent within the requirements of the van line or federal/state regulations to wear uniforms with the van line's name and/or other identification.
  - 1.a. Van operators and helpers are required by the independent household goods carrier to wear uniforms or other identification within the specifications of federal/state regulations.
  - 2. The van operator is required by the agent to paint the power equipment to the specifications of the van line or within federal/state regulations.
    - 2.a. The van operator is required by the independent household goods carrier to paint the power equipment to specifications within federal/state regulations.
  - 3. The van operator is required in accordance with Federal Highway Administration regulations to mark or display on the power equipment certain identifying information regarding the company, e.g., name, USDOT motor carrier identification number, place of business.
  - 4. The van operator is required to obtain signed shipping documents and in some cases payments from customers, and remit such documents and payments to the company.
  - 5. The van operator does not solicit business or customers directly from the general public.
  - 6. The company furnishes the van operator with some of the equipment used in the normal course of loading and handling of shipments.