

Practice Directive 1-1-3 (B)

Taxi Shift Lease Operators

Effective October 1, 2003

Reference *Workers Compensation Act* (the “Act”) section 1, in part:

“worker” includes

(a) a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise;

Reference *Assessment Policy* 1-1-6:

The term “independent operator” is referred to in section 2(2) of the *Act* as being an individual “who is neither an employer nor a worker” and to whom the Board may direct that Part 1 applies as though the independent operator was a worker. An independent operator performs work under a contract, but has a business existence independent of the person or entity for whom that work is performed. An independent operator is an “independent firm” for purposes of Item AP1-1-2.

Practice

INTRODUCTION

The taxi firm/shift lease operator relationship in the taxi industry can vary between a clear employment relationship and a clear relationship of independence. A Board officer¹ must therefore use discretion in determining and weighing the relevant factors to decide whether the relationship is one of employment or independence.

If the relevant factors are evenly balanced a Board officer must decide in favour of an individual being a worker², and therefore entitled to benefits under the *Act*, rather than being an independent operator having no right to benefits unless specifically applied for. When determining whether there is a relationship of employment or independence major consideration is given to the degree of independence between the participating parties.

¹ As at 1 January 2003, the *President’s Assignment of Authority under Part 1 of the Workers Compensation Act* authorizes an Employer Service Representative, Assessment Officer, Office Assessor or Collection Officer to determine status.

² Section 99(3) of the *Act* states “If the Board is making a decision respecting the compensation or rehabilitation of a worker and the evidence supporting different findings on an issue is evenly weighted in that case, the Board must resolve that issue in a manner that favours the worker.”

SHIFT LEASE OPERATORS

Shift lease operators in the taxi industry are defined as those who lease a taxi from a firm for a specific period of time for a flat fee per shift. A shift lease operator will be considered an independent operator only if:

- There is a lease arrangement,
- There is no sharing of revenue between the lessee and the owner,
- The lessee is in a profit/loss situation, and
- The owner exerts no more than minimum control of the lessee's operations beyond license and/or regulation restrictions.

In such cases, the WCB considers shift lease operators to be operating a business existence independent of the lessors and are therefore independent firms, are responsible for their own WCB coverage, and must register with the WCB if they have workers.

There are situations in which the lessor imposes rules on the shift lease operator that compromise the shift lease operator's independence (i.e. imposes restrictions on fuel sources, has the right to discipline, monitors trip sheets). Where such independence is compromised, the WCB must consider and apply tests for independence. The tests for independence include, but are not limited to, evaluating:

- (a) Control
- (b) Ownership of Equipment or Licences
- (c) Terms of Work Contract
- (d) Independent Initiative, Profit Sharing, and Piecework
- (e) Employment of Others
- (f) Continuity of Work
- (g) Separate Business Enterprise

The WCB must use discretion in determining and weighing the relevant factors to decide whether the relationship is one of employment or independence. If it is determined that the shift lease operators do not meet the test of independence, they are considered workers.