

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL) Trucking and Messenger Courier Industries Workers' Compensation Model Act

Adopted by the NCOIL Executive Committee on March 6, 2011, and the Workers' Compensation Insurance Committee on March 4, 2011. Readopted by NCOIL Executive Committee on July 17, 2016. Sponsored for discussion by Rep. George Keiser (ND)

Section 1. Purpose

The purpose of this Act is to establish clear criteria to determine employee and independent contractor status for workers' compensation coverage purposes.

Section 2. Definitions

Definitions for this Section will track definitions in *[Insert Workers' Compensation Statute]*.

Section 3. Independent Contractors in the Trucking and Messenger Courier Industries

In the trucking and messenger courier industries, an operator of a vehicle or vessel is an employee and subject to state workers' compensation laws unless each of the following factors is present, and if each factor is present the operator is an independent contractor:

1. the individual owns the equipment or holds it under a bona fide lease arrangement. Any lease arrangement, loan or loan guarantee cannot be with the hiring entity or any affiliate of the hiring entity. This would not apply in temporary replacement lease agreements;
2. the individual is responsible for substantially all of the principal operating costs of the vehicle or vessel and equipment, including maintenance, fuel, repairs, supplies, vehicle insurance, and personal expenses. The individual may be paid the carrier's fuel surcharge and incidental costs by the contracting entity, including, but not limited to, tolls, permits, and lumper fees;
3. the individual is responsible for supplying the necessary services to operate the equipment;
4. the individual's compensation is based on factors related to the work performed, such as mileage-based rates or a percentage of any schedule of rates, and not solely on the basis of the hours or time expended;
5. the individual substantially controls the means and manner of performing services, in conformance with regulatory requirements and specifications of a shipper; and
6. there must be a certification statement affirming that the individual whose services are being acquired meets each of the factors in Section 3(1) through (5) and that the relationship is understood to be that of an independent contractor and not that of an employee. The statement must be signed and dated by the individual supplying the service and the hiring entity. The statement must be supplied on demand to an insurance premium auditor or *[Insert Applicable State Agency]*.

Section 4. Penalties

Penalties for non-compliance will be levied in accordance with *[Insert Workers' Compensation Statute]*.

Section 5. Enforcement

The *[Insert Applicable State Agency]* shall have enforcement authority as provided under *[Insert Workers' Compensation Statute]*.

Section 6. Effective Date

This Act shall take effect immediately.