

The Do's and Dont's of Maintaining Independent Contractor Status *

From a presentation given by attorneys Howard Ross and Bert Bisgyer at the 2002 MCAA Annual Meeting

DO

- Give the IC the right to control the manner and means of performing his work.
- Permit the independent contractor to "bid" for a particular route, or a particular time slot for on-demand deliveries.
- Allow the contractor to work the hours he chooses.
- Allow the contractor to pick and choose the jobs he wishes to take.
- Pay the contractor by the job (i.e. for each trip billed). Allow the contractor to hire, and pay for, his or her own assistants.
- Allow the contractor to "hand off" work as he deems appropriate (consistent with other requirements under his independent contractor agreement).
- Supply new contractors with a brief orientation, different from a regular employee's orientation.
- Enter into (and abide by) an appropriate written independent contractor agreement, either with the contractor directly, or with a third party which will be supplying suitable contractors.
- File all required 1099 forms.
- Follow the industry standard in the competing marketplace (if you don't, your competitors will report you!).

DON'T

- Mandate specific hours, prescribe a minimum number of work hours, or otherwise fix the driver's work schedule.
- Pay by the hour, week or month.
- Pay business or travel expenses, including uniforms, vehicle or bike repairs, radios, pagers or cell phones (it is usually alright to deduct these expenses from the contractor's "settlement checks").
- Provide vehicles, bicycles, or business equipment.
- Provide company employees to assist in the performance of the contractor's job.
- Require elaborate training; do not specify specific details as to how deliveries are to be made (see pages 4-5 of the handout from the MCAA presentation).
- Make a promise of employment status; identify the independent contractor as a company employee; make the independent contractor subject to the company's employment policies or company handbook.
- Permit independent contractors to qualify for company fringe benefits.
- Mandate uniforms (unless required by the customer).

- Have the independent contractor report to the company's base office; entitle the independent contractor to use admittance card or keys to the company's principal place of business, or utilize company equipment, supplies, etc.
- Terminate without "cause" (the contractor must be obligated to perform his job according to specifications set forth in the written contract, and termination is available only if the contract terms are breached).
- Include non-competition clauses (confidentiality clauses, and a prohibition against solicitation of customers is usually alright).
- Require elaborate oral or written reports, but rather "service advisories" designed to achieve greater customer satisfaction.

* **Note:** This document is designed to provide accurate and authoritative information with regard to the subject matter covered. It is distributed with the understanding that it does not constitute the rendering of legal or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.