



ATA ITLC/NAFC

Three Contracts You Must Get Right

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Presented by:
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1. Vendor Management

- Who owns the data?
- What data is there?
 - That you don't know about
 - That you didn't pay for
- How long do they keep it?
- Software Licensing?
- Data extraction at termination?
- Hacking Risk

1. Vendor Management (Cont.)

- Types of Vendors
 - TMS
 - Update/Modules
 - GPS
 - Meet standards for IRP/IFTA
 - ELDs
 - Settings
 - Personal Conveyance Time
 - Background checks
 - FCRA Issues

2. Broker-Carrier Relations

- Broker v. Carrier Contract
- Food Safety Protocols
- Backsolicitation of Shippers
- Indemnification
- Offsets
- Non-Recourse
- Double Brokering
- Waiver of Liens
- Workers Comp
- CARB Compliance

2. Broker-Carrier Relations (cont.)

- Trailer Interchange
- Map-21
- Indemnity
- Licensing
- Limitation of Liability/Released Rate
- Insurance
- Negation of tariff
- Negation of Bill of Lading
- Safety Fitness Issues

3. Independent Contractor Agreement

- Truth in Leasing
- Misclassification
- Worker's Comp
- Unemployment
- Employment/Labor
- Tax

3. Independent Contractor Agreement (cont).

- Right to Control
- Furnishing of Equipment
- Right to Fire
- Method of Payment
- ??Special Skill

3. Independent Contractor Agreement (cont).

- ABC Test (Mass)
 - Free from control and direction
 - Outside the usual course of business of the employer
 - Worker in same business as the employer

Wage and Hour Division Interpretation No. 2015-1

- New test for Misclassification for FLSA
- Agency moving from Control Test to Economic Realities
 - Focus on the dependence on the employer
 - Factors
 - Integral Part of the Employer's Business
 - Manage to Profit or Loss
 - Relative Investment of the Parties
 - Special Skill
 - Permanent or Indefinite
 - Nature and Degree of Control
- Limited application to trucking

3. Independent Contractor Agreement (Cont.)

- Potential Problem Areas
 - Forced Purchases
 - Insurance Purchases
 - Charge Backs
 - Escrow
 - Lease Purchase
 - Compensation (fuel surcharge and assessorial)

Valid Lease Agreement

- Equipment Described
 - Receipt by Motor Carrier
- Exclusive Possession
- Term of Lease
- Termination
 - For cause
 - Expiration of time

Valid Lease Agreement

- Governed by 49 CFR 376.12
- Lease of Power Unit (not a driver)

Valid Lease Agreement

- Regulatory Compliance
 - Drivers
 - Medical
 - Drug and Alcohol
 - Equipment
 - Inspections
 - Periodic Maintenance Reports

Valid Lease Agreement

- Passengers
- Expenses of Contractor
- Compensation
 - Deductions
 - Charge backs
 - Mark ups
 - Timing of settlements

Valid Lease Agreement

- Insurance
 - Worker's Comp for Lessor's employees
 - Liability (Non-trucking or Bobtail)
 - Cargo
 - CGL
 - Deductibles
- Indemnification

Valid Lease Agreement

- Escrow (Most Common Mistake)
- Duties of Contractor upon termination
- I-C relationship
- Fuel Card (discounts)
- Company Equipment

Tips

1. Allow O-Os to refuse loads – don't track
2. Allow hauling for others via trip leases
3. No forced purchases
4. Minimize loans and settlement deductions to O-Os (don't be Mother)
5. Don't specify routes, refueling vendors/stops, work hours/rest periods, maint. timing/vendors
6. No uniforms or required painting of truck

Dual Operations with Company Drivers and Owner Operators

- *Treat ICs differently from company drivers*
 - Training and Safety Meetings
 - Dispatch
 - Compensation & Reimbursements
 - Performance Evaluations and Discipline (use bonuses instead)
 - Paperwork
 - No Policy or Safety Manuals

Lease Purchase

- *If vehicle leased from affiliate:*
 - Allow O-O to lease vehicle to other carriers (1) permanently (w/carrier's consent) or (2) trip lease (portability)
 - Allow O-O to purchase at anytime for FMV
 - Amortization tax issue
 - Maintenance
 - Third Party Companies



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