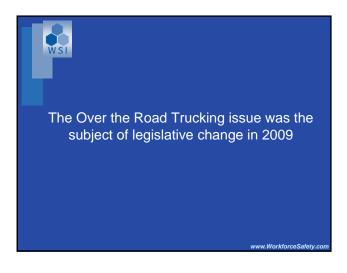


The two industries in which WSI sees many Independent Contractor Issues are the Construction and Trucking Industry









North Dakota Test

- Found in North Dakota Administrative Code 92-01-02-49
- The "Twenty Factor Test"
- Until 2006, the test used by the IRS

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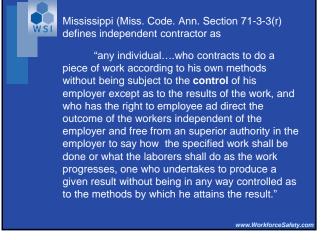


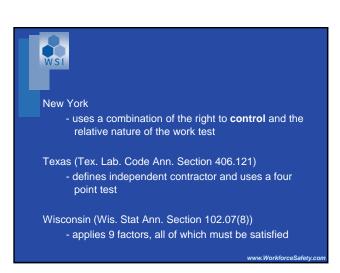
Control

- The "new" IRS test converted 20 factors into 11 tests and categorized them into 3 groups:
 - Behavioral Control
 - Financial Control
 - Type of Relationship between the Parties
- Test was changed in response to comments by Congress and representatives of labor and business requesting simplification and refinement of the test











North Dakota Law

North Dakota Administrative Code section 92-01-02-49

- 20 Factor Test
- 8 of the 20 factors given greater weight

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The 20 Factors

- 1. Instructions
- 2. Training
- 3. Integration
- 4. Services rendered personally
- 5. Hiring, supervising and paying assistants
- 6. Continuing relationship
- 7. Set hours of work
- 8. Full Time required
- 9. Doing work on the premises of the person for whom services are performed
- 10. Order or sequence set

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- 11. Oral or written reports
- 12. Payment by the hour, week, month
- 13. Payment of business or travel expense
- 14. Furnishing of tools and materials
- 15. Significant Investment
- 16. Realization of profit or loss
- 17. Working for more than one firm at a time
- 18. Making service available o the general public
- 19. Right to dismissal
- 20. Right to terminate

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WSI's Process

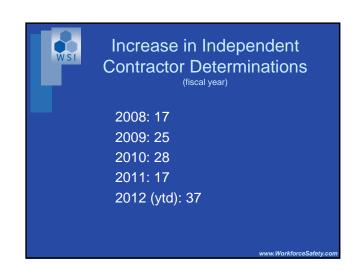
- ND Admin Code 92-01-02-49.1 permits a business to have their relationships analyzed by WSI. This rarely happens.
- The situation presents itself in:
 - A claim for benefits
 - The underwriting process
 - The audit process



WSI's Process

- WSI determines who the parties are.
- WSI sends out questionnaires to both the worker or workers and the potential employer.
- Gather any additional facts or documents which might exist, i.e. contractor agreements, payment history, invoices, tax documents.
- Apply the facts of each case to the test in the Administrative Code.
- When the call is close, we defer to statute: the presumption of employment.
- WSI makes a determination and issues a Notice of Decision or NOD. This is an appealable decision.

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Application of Facts to Law

Scenario #1: Tim the Trucker, hauls freight for an established trucking firm. He accepts loads via the dispatching office of the firm. He has done so for 10 years. During the first years of his association with the firm, he was an employee. After 5 years of employment, he bought his own tractor, but negotiated an agreement with the firm and now hauls loads both for this firm and for others. He has during the past 5 years declined to haul loads for the firm.

- Owns his "tractor," uses the trailers of whomever he is hauling for.
- Paid by the job
- Pays his own expenses but the firm pays for all DOT related licensing
- He displays the logo and signage of the firm on his tractor
- A Contractor Agreement is in place
- Itemizes his taxes deducting expenses (food, fuel, travel, tolls, maintenance of tractor). Files a schedule C.

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Employee or Independent Contractor?



Application of Facts to Law

Scenario #2: Carlton Cleaner. Carlton is hired to perform cleaning services to a string of local banks. He works at night. He provides similar services to a number of other businesses in the city in which he lives. The banks learned of his services through word of mouth as Carlton does not advertise his services to the public. The bank provides the vacuum cleaner and all supplies. Carlton handles the expected duties of dusting, mopping and emptying the garbage but each evening there is a list of additional tasks which are left by bank personnel to perform. Recently, they discussed the cleanliness of the bank with Carlton and indicated they would withhold payment if their expectations were not met.



