

# New York State Commercial Goods Transportation Industry Fair Play Act

A misclassified worker is someone who is being treated by their employer as an independent contractor OR is paid “off the books” when that worker is entitled to all the protections of legal employment. This misclassification regularly denies workers unemployment and workers compensation insurance as well as wage standards and other rights. Studies show that misclassification rates are disproportionately high in the trucking industry.

On January 10, 2014, Governor Cuomo signed into law the New York State Commercial Goods Transportation Industry Fair Play Act that went into effect on April 10, 2014. The law creates a new standard for determining whether a driver of commercial vehicles who transports goods is an employee or independent contractor.

## The New Standard

The new law presumes that such workers are employees unless payments for their services are reported on a federal income tax form 1099 (if required by law).

In addition, they must be a separate business entity or they must be:

1. Free from control and direction in performing the job, both under contract and in fact;
2. Performing services outside of the usual course of business for the employer and
3. Engaged in an independently-established trade, occupation or business that is similar to the service they perform.

## Separate Business Entity

A legal **separate business entity** is a sole proprietor, partnership, corporation or other entity that meets 11 criteria under the new law. The 11 criteria appear on the back page of this fact sheet.

## Who Is Covered by the Law

The law applies to all employers in the commercial goods transportation industry.

**Commercial goods transportation** is defined as the ‘transportation of goods for compensation by a driver who has a state-issued driver’s license, who transports goods in New York State and who operates a commercial motor vehicle as defined in Subdivision 4a of Section Two of the Transportation Law.’ (Labor Law § 862-a(3))

In addition, all vehicles with a gross vehicle weight rating or gross combination weight of 10,001 pounds or more are covered under the new law, as well as some passenger vehicles and vehicles that transport hazardous material.

## New Posting Requirement

Under the new law, employers must post a notice for all workers about the Commercial Goods Transportation Industry Fair Play Act and their rights in a prominent and accessible place on the job site. The required notice is available on the Department of Labor's web site at [www.labor.ny.gov/transportationfairplay](http://www.labor.ny.gov/transportationfairplay). Failure to post the notice can result in penalties of up to \$1,500 for a first offense and up to \$5,000 for a subsequent offense.

## Penalties

An employer that willfully violates the Fair Play Act by failing to properly classify its employees will be subject to civil penalties of up to a \$2,500 fine per misclassified employee for a first violation, and up to \$5,000 per misclassified employee for a second violation within a five-year period.

Employers may also be subject to criminal prosecution (a misdemeanor) for violations of the Act. The penalty for the first offense is up to 30 days in jail or up to a \$25,000 fine and debarment from Public Work for up to one year. Subsequent misdemeanor offenses are punishable by up to 60 days in jail or up to a \$50,000 fine and debarment from performing public work for up to five years.

Employers are also subject to all other penalties, taxes and restitution required for violations of Labor, Workers' Compensation and Tax laws that result from worker misclassification. In addition, if corporate officers and certain shareholders knowingly permit violations to occur, they may be personally liable for fines and penalties assessed under the Act.

## Contact Us

More information about the Commercial Goods Transportation Industry Fair Play Act is available on our website at [www.labor.ny.gov/transportationfairplay](http://www.labor.ny.gov/transportationfairplay). If you have any questions concerning the Commercial Goods Transportation Industry Fair Play Act or if you wish to report suspected worker misclassification, please e-mail us at [dol.misclassified@labor.ny.gov](mailto:dol.misclassified@labor.ny.gov) or call **1-866-435-1499** toll-free.

The full text of the Commercial Goods Transportation Industry Fair Play Act appears on our web site at: [www.labor.ny.gov/transportationfairplay](http://www.labor.ny.gov/transportationfairplay).

## Separate Business Entity Test

To be considered a *separate business entity* from the business to which services are provided (referred to as the "contractor" below), a sole proprietor, partnership, corporation or other entity must:

1. Be free from direction or control by the contractor over the means and manner of providing the service. The contractor may only specify the desired result of the work or provide direction required by federal rule or regulation.
2. Not be subject to cancellation or destruction when its work with the contractor ends.
3. Have invested substantial capital in its business entity beyond ordinary tools and equipment.

4. Own or lease the capital goods, gain the profits and bear the losses of the business entity.
5. Make its services available to the general public or others in the business community not a party to the business entity's written contract on a continuing basis.
6. If required by law, provide services reported on a federal income tax form 1099.
7. Perform services for the contractor under a written contract and under the business entity's name. The contract must state that the relationship between the contractor and the business entity is that of independent contractors or separate business entities.
8. Obtain and pay for any required license or permit in the entity's own name or, if allowed by law, pay for the use of the contractor's license or permit.
9. Hire its own employees without contractor approval and pay those employees without reimbursement from the contractor.
10. The contractor must not represent the business entity or employees of the business entity as its own employees to the contractor's customers.
11. Have the right to perform similar services for others on whatever basis and whenever it chooses.

The entity must meet all 11 criteria to be considered a separate business entity.  
(Labor Law §862-b(2) [www.labor.ny.gov/transportationfairplay](http://www.labor.ny.gov/transportationfairplay))