**Section 2732.205 Owner-Operators of Motorized Vehicles**

a) Section 212.1 of the Act [820 ILCS 405] applies only to services performed on or after August 8, 1995.

b) The burden of proving that services are exempt, under Section 212.1, from the Act's definition of "employment" rests with the person or entity to which the individual is contracted to perform the services.

c) Section 212.1 applies only to services an individual performs as an operator of a truck, truck-tractor or tractor.

EXAMPLE: Smith performs services for Company A, which is licensed by the Illinois Commerce Commission as a motor carrier of personal property. These services consist entirely of loading and unloading trucks at Company A's loading dock. Section 212.1 of the Act does not exempt Smith's services for Company A from the Act's definition of "employment".

d) For purposes of applying Section 212.1:

1) "Truck" has the meaning ascribed to it in Section 1-211 of the Illinois Vehicle Code [625 ILCS 5].

2) "Truck-tractor" has the meaning ascribed to it in Section 1-212 of the Illinois Vehicle Code.

3) "Tractor" has the meaning ascribed to "road tractor" in Section 1-178 of the Illinois Vehicle Code.

4) "Family member" means any parent, sibling, child, sibling of a parent, or any of the foregoing relations by marriage or civil union.

5) A person or entity owns, controls or operates another entity when:

A) by virtue of its ownership interest in that other entity, it has the power to direct the management of the other entity;

B) by virtue of its ownership interest in that other entity combined with the ownership interest of one or more others, it actually directs, by itself or in conjunction with others, the management of the other entity; or

C) it has responsibility for overseeing the day-to-day operations of that other entity.

6) Ownership, control or operation may be through any one or more natural persons or proxies, powers of attorney, nominees, proprietorships, partnerships, associations, corporations, trusts, joint stock companies or other entities or devices or any combination of these.

7) "Person or entity" means a sole proprietorship, partnership, association, corporation or any other legal entity.

8) A requirement imposed by a governmental regulatory or licensing agency with respect to services an individual performs as an operator of a truck, truck-tractor or tractor is not a requirement imposed on the individual by any person or entity to which the individual is contracted to perform the services.

e) Section 212.1(a)(1) of the Act

Section 212.1(a)(1) is not satisfied unless:

1) The services are performed by an individual who is registered or licensed as a motor carrier of real or personal property by the Illinois Commerce Commission, US Department of Transportation, or any successor agencies; or

2) Both:

A) The individual performing the services is doing so under an owner-operator lease contract; and

B) The person or entity with which the individual is contracted to perform the services is registered or licensed as a motor carrier of real or personal property by the Illinois Commerce Commission, US Department of Transportation, or any successor agencies.

EXAMPLE: Jones, who owns her own pickup truck, works for ABC Hardware Store. As part of the regular course of Jones' work for ABC, she uses her pickup truck to make deliveries to customers. Neither Jones nor ABC is licensed or registered as a motor carrier of property. Section 212.1 of the Act does not exempt the delivery services Jones performs for ABC from the Act's definition of "employment."

f) Section 212.1(a)(2) of the Act

Section 212.1(a)(2) is not satisfied unless both subsections (f)(1) and (2) of this Section are satisfied.

1) The individual performing the services must be able, with reasonable notice if required by the contract, to terminate the lease contract with the person or entity to which the individual is contracted to perform the services, prior to the termination date specified in the contract, without incurring any legal or equitable liability to that person or entity other than liability for damage to the property being carried or damage or injury caused as a result of the operation of the truck, truck-tractor or tractor.

A) EXAMPLE: The lease contract between Smith and Motor Carrier A extends from January 1, 1997 through June 30, 1997 and provides that Smith's terminating the contract prior to June 30, 1997, under any circumstances, will result in Smith's being liable for liquidated damages determined according to a formula specified in the contract. Section 212.1 of the Act does not exempt the services Smith performs pursuant to the contract from the Act's definition of "employment" because Smith does not have the right to terminate the contract as contemplated by Section 212.1(a)(2) of the Act.

B) EXAMPLE: The lease contract between Jones and Motor Carrier C extends from January 1, 1997 through June 30, 1997, but provides that Jones may terminate the lease contract prior to June 30, 1997, without incurring any liability to C other than liability for damage to the property being carried or damage or injury caused as a result of the operation of Jones' truck, on the condition that Jones provides C with reasonable notice of termination. If Jones terminates the contract without providing C with reasonable notice, Jones will be liable for liquidated damages determined in accordance with a formula specified in the contract. Under these facts, absent any other evidence that indicates C has failed to satisfy the requirements of subsections (e) through (k), the services Jones performs for C are exempt from the Act's definition of "employment".

2) Following the termination of the lease contract, the individual must be able to perform the same or similar services for others, on whatever basis and whenever he or she chooses, without incurring any legal or equitable liability to the person or entity to which the individual was contracted to perform the services under the terminated lease contract.

EXAMPLE: The lease between Davis and Motor Carrier B provides that, upon termination of the contract, Davis shall not, for a period of six months, perform services as an operator of a truck, truck-tractor or tractor for any other motor carrier located within a 90-mile radius of B's main office. The provision is enforceable by injunction. Section 212.1 of the Act does not exempt the services Davis performs pursuant to the contract from the Act's definition of "employment".

g) Section 212.1(a)(3) of the Act

Section 212.1(a)(3) is not satisfied unless the person or entity to which the individual is contracted to perform the services imposes no requirements on the individual to perform the services, or be available to perform the services, at a specific time or times, according to a specific schedule or for a specified number of hours. The person or entity is not considered as having imposed such a requirement when the person or entity informs the individual performing the services of a pickup or delivery time specified by the shipper or receiver of the property to be transported.

1) EXAMPLE: Adams telephones Motor Carrier A at 8:00 A.M. each day Adams is available to provide truck driving services to see whether A has any work for Adams. After being informed that there is work, Adams must make himself available to perform the work by 9:00 A.M. If Adams fails to make himself available by 9:00 A.M., Motor Carrier A will enter a demerit on his personnel records. If Adams accumulates five demerits during a year, Motor Carrier A will terminate its relationship with Adams. Section 212.1 of the Act does not exempt the services Adams performs for Motor Carrier A from the Act's definition of "employment".

2) EXAMPLE: Motor Carrier B telephones Smith in each of five consecutive weeks to offer Smith work providing truck driving services for B. Each time, Smith indicates he is not interested. B does not contact Smith after that. By itself, B's decision not to attempt to do further business with Smith, an individual who has consistently refused B's offers of work, is not evidence that B has imposed any requirements on Smith to perform services, or be available to perform services, at a specific time or times, according to a specific schedule or for a specified number of hours.

3) EXAMPLE: ABC Produce Company has contracted with XYZ Trucking Company to deliver produce to various wholesalers every Tuesday, Thursday and Saturday; ABC has instructed XYZ the produce must be delivered to each wholesaler no later than 4 A.M. Jones is to perform the services for XYZ as the operator of a truck, transporting produce from ABC. XYZ informs Jones of the 4 A.M. deadline imposed by ABC. It is understood that Jones' failure to meet the deadline may jeopardize his ability to drive for XYZ again. The deadline was specified by the shipper. The fact that a carrier may be reluctant to transact future business with a driver who has failed to meet the shipper's deadline does not, by itself, indicate the carrier has failed to satisfy Section 212.1 of the Act. Under these facts, absent any other evidence that indicates XYZ has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services Jones performs for XYZ are exempt from the Act's definition of "employment".

4) EXAMPLE: White operates a truck for the ABC Produce Company. ABC instructs White that produce picked up from ABC's terminal must be delivered to XYZ Wholesaler by 4 A.M. on the delivery date. It is understood that White's failure to meet the deadline may jeopardize his ability to drive for ABC again. The fact that ABC may be reluctant to transact future business with a driver who has failed to meet the delivery time ABC, as the shipper, has specified does not by itself indicate ABC has failed to satisfy Section 212.1 of the Act. Under these facts, absent any other evidence that indicates ABC has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services White performs for ABC are exempt from the Act's definition of "employment".

5) EXAMPLE: Under a contract between Reynolds and ABC Construction Company, Reynolds is to deliver asphalt to a specified ABC construction site at 8 A.M. on the designated day. Timely delivery of asphalt will require Reynolds to pick up the asphalt from the location specified by ABC no later than 7 A.M. It is understood that Reynolds' failure to pick up and deliver the asphalt on time may jeopardize his ability to drive for ABC again. The fact that ABC may be reluctant to transact future business with a driver who has failed to meet the pickup and delivery times ABC, as the receiver, has specified does not, by itself, indicate ABC has failed to satisfy Section 212.1 of the Act. Under these facts, absent any other evidence that indicates ABC has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services Reynolds performs for ABC are exempt from the Act's definition of "employment".

h) Section 212.1(a)(4) of the Act

Section 212.1(a)(4) is not satisfied unless:

1) the individual performing the services leases or holds title to the truck, truck-tractor or tractor; and

EXAMPLE: Smith operates a truck for ABC Trucking Company. ABC holds title to the truck. Section 212.1 of the Act does not exempt the services Smith performs for ABC from the Act's definition of "employment".

2) the individual or entity from which the truck, truck-tractor or tractor is leased or that holds a security or other interest in the truck, truck-tractor or tractor is not:

A) the person or entity to which the individual operating the truck, truck-tractor or tractor is contracted to perform the services; or

B) owned, controlled or operated by or in common with, to any extent, directly, or indirectly, the person or entity to which the individual operating the truck, truck-tractor or tractor is contracted to perform the services or a family member of a shareholder, owner or partner of the person or entity with which the individual is contracted to perform the services.

i) EXAMPLE: Adams operates a truck for XYZ Trucking Company, a corporation in which Jones is the majority shareholder. While Adams holds title to the truck, ABC Trucking Company, of which Jones is the sole proprietor, holds a lien on Adams' truck. Section 212.1 of the Act does not exempt the services Adams performs for XYZ from the Act's definition of "employment", since ABC is owned or controlled in common with XYZ.

ii) EXAMPLE: Madison operates a truck for XYZ Trucking, a corporation in which Jefferson is a 5% shareholder. Madison holds title to the truck, but ABC Finance Company, which is managed by the brother of Jefferson's father-in-law, holds a lien on the truck. Section 212.1 of the Act does not exempt the services Madison performs for XYZ from the Act's definition of "employment", since the individual who operates ABC is a family member of a shareholder of XYZ.

iii) EXAMPLE: ABC Trucking Company, a corporation, is being audited by the Department to determine, among other items, whether services that Jones provided for ABC were "employment" for purposes of the Act. ABC demonstrates that Jones held title to the truck he operated in service to ABC while he was performing the services for ABC. ABC also provides a written statement, signed by an owner or officer of ABC and attesting that the owner or officer has made reasonable inquiries into the matter and, to the best of the owner's or officer's knowledge, while Jones was performing the services for ABC, ABC did not have any interest in Jones' truck; no individual or entity that might have held an interest in Jones' truck was owned, controlled or operated by or in common with, to any extent, directly or indirectly, ABC; and no individual or entity that might have held an interest in Jones' truck was owned, controlled or operated by or in common with, to any extent, directly or indirectly, a family member of a shareholder of ABC. The auditor is not aware of any evidence that contradicts the written statement. These facts indicate that Section 212.1(a)(4) of the Act is satisfied with respect to the services Jones performed for ABC.

i) Section 212.1(a)(5) of the Act

1) Section 212.1(a)(5) is not satisfied unless the individual operating the truck, truck-tractor or tractor pays all costs of licensing and operating the truck, truck-tractor or tractor. Section 212.1(a)(5) is not satisfied if the costs of licensing or operating the truck, truck-tractor or tractor are separately reimbursed by an individual or entity other than the individual operating the truck, truck-tractor or tractor. Costs not directly associated with the operation or licensing of the truck, including but not limited to telephone charges, expenses related to the loading or unloading of cargo and workers' compensation premiums with respect to the operator of a truck, truck-tractor or tractor do not constitute costs of licensing or operating the truck, truck-tractor or tractor.

A) EXAMPLE: Smith operates a truck for ABC Trucking Company. At the end of each week in which Smith has performed services for ABC, the company furnishes Smith a check, accompanied by a statement itemizing the licensing and operational expenses for which Smith is being reimbursed, including wear and tear on Smith's truck. Section 212.1 of the Act does not exempt the services Smith performs for ABC from the Act's definition of "employment".

B) EXAMPLE: Adams operates a truck for XYZ Trucking Company, which furnishes Adams with a company debit card Adams may use to purchase fuel. XYZ covers all approved charges against the debit card and does not charge them back to Adams. Section 212.1 of the Act does not exempt the services Adams performs for XYZ from the Act's definition of "employment".

C) EXAMPLE: Jones operates a truck for XYZ Trucking Company. At the end of each week in which Jones has performed services for XYZ, the company furnishes Jones with a check. Jones deposits a portion of the payment received from XYZ in a checking account she maintains to cover the costs of operating the truck. Under these facts, absent any other evidence that indicates that XYZ has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services Jones performs for XYZ are exempt from the Act's definition of "employment".

D) EXAMPLE: Reynolds operates a truck for ABC Trucking Company. At the end of each week in which Reynolds has performed services for ABC, the company furnishes Reynolds with a check, based on a flat per mile fee. There is no indication that any portion of the fee is intended as a separate reimbursement to cover any costs directly associated with operating or licensing Reynolds' truck. Under these facts, absent any other evidence that indicates that ABC has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services Reynolds performs for ABC are exempt from the Act's definition of "employment".

E) EXAMPLE: Smith operates a truck for ABC Construction Company. At the end of each week in which Smith has performed services for ABC, the company furnishes Smith with a check, based on an hourly fee for his services. There is no indication that any portion of the check is intended as a separate reimbursement to cover any costs directly associated with operating or licensing Smith's truck. Under these facts, absent any evidence that indicates ABC has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services Smith performs for ABC are exempt from the Act's definition of "employment".

F) EXAMPLE: ABC Trucking Company pays for a customized paint job for the truck of any driver who drives over 1,000,000 miles for it without an accident, as long as the driver owns the truck. While technically, the cost of painting a truck may be considered an operating cost, the principal purpose of the payments in this case is not to reimburse the driver for operating costs but to reward his or her safe driving record. Under these facts, absent any other evidence that indicates that ABC has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services the driver performs for ABC are exempt from the Act's definition of "employment".

2) This subsection (i) does not apply if federal or State law or regulation requires that the costs of licensing or operating the truck, truck-tractor or tractor be paid by the person or entity to which the individual operating the truck, truck-tractor or tractor is contracted to perform the services.

j) Section 212.1(a)(6) of the Act

1) Section 212.1(a)(6) is not satisfied unless:

A) the individual performing the services offers or advertises his or her services to the public; and

B) the individual performing the services maintains his or her own business identity.

2) Compliance with subsection (j)(1) can be demonstrated by the individual displaying his or her name on the truck, truck-tractor or tractor, or otherwise.

EXAMPLE: Smith has his name and address painted on the doors of his truck. While operating his truck in the performance of services for XYZ Trucking, Smith also has affixed to his truck an identification device indicating he is hauling for XYZ. There is nothing on the truck to indicate Smith does not offer his services to the public. Under these facts, absent any other evidence that indicates XYZ has failed to satisfy the elements of subsections (e) through (k) of this Section, the services Smith performs for XYZ are exempt from the Act's definition of "employment".

k) Section 212.1(a) of the Act is not satisfied if, as a condition for retaining an individual's services as an operator of a truck, truck-tractor or tractor, the person or entity to which the individual is contracted specifies the person or entity from which the individual is to purchase the truck, truck-tractor or tractor.

1) EXAMPLE: Smith operates a truck for ABC Trucking Company. The truck was purchased from XYZ Company, from which ABC requires anyone who wishes to drive for ABC to purchase his or her truck. Section 212.1 of the Act does not exempt the services Smith performs for ABC from the Act's definition of "employment".

2) EXAMPLE: Jones operates a truck for XYZ Trucking Company. Jones purchased the truck from Smith. Previously, Adams, the owner of XYZ, had advised Jones that Smith was interested in selling the truck. Adams had also indicated that, based on what he knew about the truck, he would have bought it if he had been in the market for a truck. However, at no time did Adams indicate that Jones' ability to perform services for XYZ was dependent upon Jones' purchasing a truck from Smith. Under these facts, absent any other evidence that indicates that XYZ has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services Jones performs for XYZ are exempt from the Act's definition of "employment".

(Source: Amended at 43 Ill. Reg. 6449, effective May 14, 2019)