

CAR SHUTTLERS AND THE MICHIGAN UNEMPLOYMENT TAX

by
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Dealers frequently use car shuttlers to deliver vehicles to a customer, auction, or another dealer. Dealers have historically treated the car shuttlers as independent contractors and have not paid Michigan Unemployment Tax on their compensation. The Michigan Employment Security Commission (“MESC”) has instructed its auditors to treat car shuttlers as employees, and compensation to them as wages subject to the Michigan Unemployment Tax. However, the MESC has acknowledged that although the MESC policy is that car shuttlers are employees, a car shuttler may nevertheless qualify as an independent contractor. In making its determination, the MESC will look at all of the facts and circumstances of each case to determine whether a car shuttler is an employee or an independent contractor.

In two cases, auto dealer car shuttlers were determined by the MESC to be independent contractors and not employees. In each of these cases, the MESC investigated the facts and circumstances and concluded that the car shuttlers met the MESC test to qualify as independent contractors. The factors that the MESC found to be important in their determination that the car shuttlers were independent contractors and not employees include the following:

1. The car shuttlers and the dealership had signed an independent contractors agreement, which provided the following: that the car shuttlers were independent contractors and not employees; the car shuttler maintained all necessary licenses required to perform the job; the car shuttler was allowed to employ other employees to perform the services for the independent contractor; that a policy of workers’ compensation insurance would be obtained on the car shuttlers employee, the contractor would supply proof of insurance prior to assigning an employee to engage in

the vehicle delivery and the dealer would provide a car shuttler Form 1099 if yearly earnings exceeded \$600.

2. Some car shuttlers drove vehicles for more than one dealer and the shuttler held themselves out in the community as available to drive vehicles for other dealers.

3. Driving for a dealer is not the car shuttler's sole source of income, and the shuttler does not depend on the payment from the dealer for their living expenses.

4. The car shuttler does not have to accept the offer to drive vehicles when contacted by the dealer.

5. The car shuttler is not instructed as to when and how to deliver the vehicle. The dealer does not "control" the car shuttler as to how or when the job is performed.

Dealers should select car shuttlers that meet the criteria listed above to increase the likelihood that their car shuttlers will be treated as independent contractors for MESC purposes. Dealers should also expect that the MESC's initial position will be that the car shuttlers are employees. To contest this finding, a dealer must complete the MESC Form UA1015, Application for Determination of Employment Status. The Application will include an explanation of all of the facts and circumstances regarding the car shuttlers and is a request to the MESC to determine whether they will treat the car shuttlers as independent contractors or employees. If the dealer receives a favorable decision, no further action is necessary. If the decision is not favorable, the decision may be appealed to an Administrative Law Judge, who will review the case and issue an Opinion.

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