



## The *InterConnect* FLASH!

Practical Bursts of Information Regarding Critical Independent Contractor Relationships

### FLASH NO. 22

#### LEGISLATING, BUDGETING AND SPRING CLEANING

Spring has sprung, and with it have sprung up new challenges to motor carriers and their fleet of owner-operators. On the state level, more and more states continue to push for legislation that presumes statutory employee status for truckers. Working in tandem with that on the federal level, newly-released agency budgets reveal the level of commitment the federal government has to targeting the independent contractor business model.

Washington, New York and New Jersey all have legislation moving through their state legislatures, all with the aim of reclassifying truckers as employees instead of independent contractors. Washington's proposed bill, which really zeros in on Washington's ports, would classify drayage truck operators as statutory employees only. New Jersey's proposed bill also goes after port truckers, targeting drayage and parcel delivery owner-operators, making them employees of their contracting companies. And New York's proposed bill retools the same bill which was passed two years ago in New York which targeted the construction industry. New York wants to cease considering a trucker as an independent contractor if he performs the same services that the company would normally perform itself.

Not to be outdone, the federal government also is getting into the act. The Obama Administration recently released its proposed 2013 Budget. In it, the Department of Labor's Wage and Hour Division has requested an increase of \$3.8 million to their budget, which would be used to increase enforcement of workers that the government believes are misclassified as independent contractors when they are really employees. Hiring 35

additional employees for enforcement duty will make a dent in this, as will the continued effort to sign up all fifty states to the Memorandum of Understanding between the Department of Labor and the IRS which we told you about in the December Flash. With more states signed on to share information on companies and worker misclassification enforcement efforts among all agencies, it may only be easier for the government to identify violators. And they must be doing a good job so far – the DOL's Wage and Hour Division collected almost \$4 million in 2010 in back wages from worker misclassification for minimum wage and overtime violations. In 2008, this figure was \$1.3 million.

The industry is alert to all this governmental action. In fact, just this month, both Robert Low of Prime, the newly elected Chairman of the Truckload Carriers Association and Dan England of C.R. England, the Chairman of the American Trucking Association, have announced independent contractor related action items on their respective agendas. Mr. England recently announced the creation of ATA's Independent Contractor Task Force. Rich Plewacki of our Firm has been appointed to that Task Force so we continue to be on the leading edge of fighting the assault on the long standing independent contractor model in the trucking industry. So stay tuned.

In closing, its back-to-the basics. Just like dusty draperies and weeds in the garden, all this adds up to potential trouble for motor carriers using independent contractors. To be as prepared as possible, a bit of spring cleaning may be in order. Air out those old contracts to make sure they are up to date, and be sure to sweep

away any terms that do not reflect your actual day-to-day treatment of your owner-operators. And likewise, make sure that your management and operational team are mirroring the contract terms in their daily dealings with independent contractors.

We here at Benesch can assist your business in reviewing your independent contractor programs to clear out all the cobwebs. Please call if you have questions or if we can be of further assistance.

#### Additional Information

For additional information, please contact any of the following attorneys:

#### Transportation & Logistics Practice Group

**Marc S. Blubaugh** at 614.223.9382 or [mblubaugh@beneschlaw.com](mailto:mblubaugh@beneschlaw.com)

**J. Allen Jones III** at 614.223.9323  
[ajones@beneschlaw.com](mailto:ajones@beneschlaw.com)

**Thomas Kern** at 614.223.9369 or  
[tkern@beneschlaw.com](mailto:tkern@beneschlaw.com)

**Martha Payne** at 541.764.2859 or  
[mpayne@beneschlaw.com](mailto:mpayne@beneschlaw.com)

**Richard A. Plewacki** at 216.363.4159 or  
[rplewacki@beneschlaw.com](mailto:rplewacki@beneschlaw.com)

**Teresa E. Purtiman** at 614.223.9380 or  
[tpurtiman@beneschlaw.com](mailto:tpurtiman@beneschlaw.com)

**Eric L. Zalud** at 216.363.4178 or  
[ezalud@beneschlaw.com](mailto:ezalud@beneschlaw.com)

#### Labor & Employment Practice Group

**Maynard Buck** at 216.363.4694 or  
[mbuck@beneschlaw.com](mailto:mbuck@beneschlaw.com)

**Joseph N. Gross** at 216.363.4163 or  
[jgross@beneschlaw.com](mailto:jgross@beneschlaw.com)

**Peter N. Kirsanow** at 216.363.4481 or  
[pkirsanow@beneschlaw.com](mailto:pkirsanow@beneschlaw.com)

[www.beneschlaw.com](http://www.beneschlaw.com)