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The *InterConnect* FLASH!

Practical Bursts of Information Regarding Critical Independent Contractor Relationships

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FROM COAST TO COAST, IT ROLLS ONWARD

Trucking companies' usage of the independent contractor model continues to be under assault by courts and governmental agencies. August saw two new court decisions involving unemployment benefits and FLSA and labor law that have given companies another boost in their on-going battle.

Out of Oregon, our first case was an appeal by May Trucking Company of the Oregon Employment Department's (OED) ruling that one of May's drivers was eligible for unemployment benefits. The long-haul driver had signed an independent contractor agreement and a lease agreement after being employed by May for a year. When he could no longer accept long-haul assignments for family reasons, he resigned and sought and was awarded unemployment benefits. May challenged the award, arguing that the driver fell under the Oregon statute precluding employment status for a driver if he leases equipment and provides transportation by motor vehicle for a for-hire carrier. OED rejected this exclusion and relied on a different statute, arguing that where a continuing relationship exists between employer and employee, May's "for-hire carrier" status did not necessarily exclude the driver from employment status.

The Court ruled that eligibility for unemployment benefits cannot be determined simply by looking at whether the driver has performed work in "employment" under Oregon statutes. Statutes that provide exclusions from "employment" must be considered, too. Individual statutes don't exist in a vacuum and must be considered simultaneously with other statutes.

From the Empire State comes our second case, where five drivers challenged their employment status with CEVA Freight. The drivers had signed independent contractor agreements and leased their vehicles to CEVA, but then argued for employment status under the Fair Labor Standards Act (FLSA) and New York Labor Law (NYLL). The Court looked at both the "economic reality" test and the degree of control over the means and results.

Under the NYLL analysis, the Court focused on issues such as whether the drivers were on fixed schedules, could work for others, had benefits, were supervised on routes, and could accept or reject loads. For the FLSA, the analysis was similar but focused on the degree of control, opportunity for profit or loss, degree of skill needed, the duration of the relationship, and the extent to which the work is integral to CEVA. After looking at all factors in total, the Court determined that the drivers were indeed independent contractors, in business for themselves. This result is thankfully similar to other cases we have recently highlighted here. As we have seen, the working relationship between the parties must allow the worker to control the manner and means of performance without too much direction or control from the company, and the contract terms must mirror this working reality.

Each coast has produced a result favoring trucking companies and the use of the independent contractor model. Challenges continue nationwide, however, and we will keep you updated as new decisions roll in. In the meantime, if you have questions on IC developments or would like to review your own IC model, please give us a call here at Benesch.

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