CLIENT ALERTS & INSIGHTS

Independent Contractor Owner-Operators and the Second Trump Administration: Motor Carrier Expectations for the Road Ahead

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The role of independent contractor owner-operators ("ICOOs") in the trucking industry has a long history as a business model and also as a lightning rod for scrutiny. At the start of 2025, the popular consensus is that the legal status of independent contractor relationships will see a markedly different approach under the second Trump Administration compared to the Biden Administration.

As one example, many commentators in the transportation industry expect the second Trump Administration to roll back the Biden Administration's rules and policies regarding independent contractor classification, in an effort to support the traditional independent contractor model. However, as a practical matter, the Department of Labor ("DOL") will likely have minimal ability to independently influence independent contractor classification analyses nationwide. This article explores how, if at all, the Trump Administration's policies might impact motor carriers relations with independent contractor drivers.

Comparing and Contrasting the Biden and First Trump Administrations

The first Trump Administration and Biden Administration differed significantly in their approaches to independent contractor classification misclassification. Under the first Trump Administration, the DOL rescinded a 2015 memorandum that instructed businesses and agencies to treat ICOOs as employees. Further, just before President Trump left office in January of 2021, the DOL issued a proposed rule that would have established "core factors" for determining whether a worker is properly classified as an independent contractor in relation to the Fair Labor Standards Act ("FLSA"). The proposed rule prioritized two core factors in determining worker status: (1) the nature and degree of the worker's control over the work; and (2) the worker's opportunity for profit or loss. If an ICOO could establish these two factors, independent contractor status was established without the need to consider additional "guidepost" factors. The transportation industry largely viewed the "core factors" rule as more business-friendly and supportive of independent contractor classification.

The Biden Administration took a different stance toward ICOOs. In May 2021, the Biden Administration's DOL withdrew the aforementioned proposed rule of the first Trump Administration prior to it taking effect. In January 2024, the DOL issued a new rule that went into effect in March 2024 and implemented a totality of the circumstances, "economic realities" test. This "economic realities" test considered six factors for determining whether a worker is properly classified as an independent contractor: (1) the contractor's opportunity for profit or loss; (2) the investments made by the contractor and the putative employer; (3) the degree of permanence of the relationship between the contractor and the putative employer; (4) the nature and degree of control by the

putative employer over the contractor; (5) the extent to which the work performed by the contractor is an integral part of the putative employer's business; and (6) the contractor's skill and initiative. The Biden Administration's rule was seen as less favorable to independent contractor classification and caused frustration in the trucking industry.

Limitations on Executive Action

While the second Trump Administration may revisit federal worker classification rules, those rules issued by executive branch agencies will likely have a limited impact on disputes involving analysis of independent contractor classification. The Supreme Court in *Loper Bright Enterprises v. Raimondo* overturned the *Chevron* doctrine, which had required federal courts to defer to the reasonable determinations of executive agencies in interpreting ambiguous statutory language. Now, federal courts must engage in independent judicial interpretation and refrain from abdicating such responsibility to executive branch agencies. Courts may view executive agency interpretations and opinions as persuasive, but they can no longer exercise deference or view agency interpretations as controlling. Thus, courts will not defer to the DOL's interpretation of the FLSA, including "rules" regarding independent contractor classification.

Further, despite a possible return to the "two factors" rule by the DOL under the second Trump Administration, state laws governing worker misclassification will continue to be the primary determinant in many worker classification disputes. DOL interpretations of the FLSA do not have an impact on state laws since states have the authority to enact and enforce their own wage & hour laws which can be more stringent than federal laws. Some states that adopted more stringent tests for worker classification, such as those that adopted the ABC test. Thus, motor carrier businesses in states unfavorable to the ICOO model will continue to face disputes regarding worker classification. Simply put, this is the greatest challenge to ICOO relationships and the Trump Administration is unlikely to alleviate that legal risk for motor carriers.

Policy Changes to Expect from the Second Trump Administration

Although the second Trump Administration will likely have minimal impact on federal courts' interpretations and state laws regarding worker classification, the Trump Administration appears nonetheless poised to address independent contractor classification at the federal level. Change may manifest through DOL enforcement policies. For example, the DOL may reduce resources dedicated to enforcement actions and audits for alleged independent contractor misclassification. The second Trump Administration is also likely to revert to the "core factors" test through the issuance of a new rule. However, even if there is a successful rulemaking on this or related issues, it will likely have minimal impact on federal courts reviewing actions involving alleged independent contractor misclassification.

The Road Ahead for Motor Carriers and ICOOs

The key takeaway is that while the second Trump Administration is likely to be more favorable to the domestic trucking industry, this pro-industry sentiment may be more symbolic in nature without the monumental impact on driver relationships that many commentators in the industry seem to expect. Even in the new Administration, motor carriers must continue to routinely scrutinize and update their driver models, lease agreements, and day-to-day operational practices. The trucking industry may not relent in its defense of proper independent contractor classifications for drivers under well-structured and legally compliant programs. The risks for this longstanding industry model will not subside within the next four years.

Benesch's Transportation & Logistics and Labor & Employment teams are experienced in counseling clients on the development of legally defensible ICOO models and all manner of federal and state legal compliance.

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