

InterConnect FLASH! No. 29 – Tea Leaves and Crystal Balls

The InterConnect FLASH! Practical Bursts of Information Regarding Critical Independent Contractor Relationships

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Now that the election is over, we are all enjoying less junk mail and a respite from the continuous loop of TV political advertisements. President Obama has been given four more years in Washington, so should the transportation industry be worried?

There is no reason to assume that the Administrations' agenda will change much from the prior four years' policies. Worker misclassification has been a priority since 2009 and this will likely continue in the new term. Transportation companies are justifiably cautious and uncertain as to how aggressive the Department of Labor and the IRS will get in the coming years, given their aggressive nature in the past 4 years. Currently, Memorandums of Understanding (MOU) between the DOL, IRS, and 13 states, which create enforcement cooperation between federal and state agencies, only compound the anxiety. And, in late November, Texas held hearings on Payroll Fraud and Employee Misclassification at the Texas Workforce Commission, with many urging the Commission to press the Texas Legislature to begin a crackdown on worker misclassification. It does not look like these aggressive federal and state tactics will lessen any time soon.

Unionization remains a concern for a significant portion of the transportation industry. The Administration is openly friendly to unions, and classifying workers as employees instead of independent contractors gives the unions a base of workers from which they can attempt unionization. The NLRB should provide a big assist for unionization efforts as well, as it will likely continue its employee-friendly rulings, aggressively challenging employer policies.

The FMCSA's agenda will also likely remain unchanged. The FMCSA has administrative responsibility for many initiatives established in the MAP-21 legislation, including: minimum 5 year motor carrier registration renewals, separate registration numbers for multiple operating authorities, new minimum entry level commercial driver training requirements, and a commercial driver national database for failed or refused DOT drug or alcohol tests. The FMCSA must develop the rules on many of these initiatives, which should give them lots to do as the legislation's benchmark dates are approaching.

On the legislative front, the Employee Misclassification Prevention Act may rear its head again, which would require employers to keep records on all workers who provide services for them and to notify each worker of their classification as an "employee" or "non-employee". Workers would be

directed to the DOL website for a synopsis of their rights, which would include instructions on how to protest their classification. And worker misclassification may create other unforeseen expenses. For instance, in the Affordable Care Act (ACA), 50 full-time employees is the threshold for ACA coverage. An audit that reclassifies independent contractors as employees could push an employer over the threshold and into an unplanned insurance expense.

While the outcome of the election was not necessarily a positive for the transportation industry, at least we have a general idea of the policies and strategies which will likely continue in the new term. We are always here to discuss your concerns or provide a comprehensive look at your current IC policies in light of the continued aggressive worker misclassification initiatives. Give us a call if we can help.

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