NEWSLETTERS

InterConnect FLASH! No. 38 – Worker Misclassification Disputes Seem to Know Season

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Authors: Richard A. Plewacki

The assault on the independent contractor model continues in earnest in the first half of 2014. Recent court rulings in California only serve to validate the initiatives taking hold with state legislatures, individual lawmakers, and protests from workers themselves.

Much of this seems to emanate from the great state of California. The most recent salvo has seen seven port drayage drivers file a complaint heard by the California Labor Commission Division of Labor Standards Enforcement. The drivers alleged that despite their classification as independent contractors, they were really employees of Pacer Cartage, Inc. Earlier this month, the California Labor Commission agreed and issued an order that, because of the amount of control Pacer Cartage had over the workers, the company "knew or should have known" that the drivers were really employees and not independent contractors. The result is a $2.2 million judgment against Pacer Cartage.

This ruling, along with a litany of pending complaints and other recent favorable rulings, may have emboldened L.A. port drivers to push even further. The California Department of Industrial Relations reports that independent contractor port drivers have filed over 500 complaints for worker misclassification, with thirty-two drivers successfully winning decisions against thirteen trucking companies. And, a recent late-March settlement agreement between the Teamsters and trucking company Pacific 9 Transportation, Inc., brokered by the National Labor Relations Board, could have far-reaching effects. The settlement agreement effectively ended a dispute over the company blocking union organization efforts for workers, who the company considered independent contractors. The Teamsters claim that because the company accepted the settlement thus allowing potential union formation, this is their acknowledgement that the drivers are not independent contractors at all but are really employees and thus fall under the jurisdiction of the NLRB. The settlement does contain a non-admissions clause, and as we know each case and circumstance is different based on its unique facts, but of course the drivers and Teamsters can spin the resulting settlement to favor the worker misclassification agenda in a blanket indictment. With a host of press and rulings already going their way, a scheduled two-day limited strike on April 28 and 29 at cargo terminals in ports in both Los Angeles and Savannah, Georgia, led by the Teamster-backed group, Justice for Port Truck Drivers, aims to call more attention to worker misclassification of drivers.

Across the country in New Jersey, the statehouse has once again introduced an independent contractor misclassification bill aimed squarely at the trucking industry. An identical bill was vetoed in 2013 by Governor Christie, but legislators have decided to try it again. The bill specifically targets drayage truck operators and parcel delivery drivers and requires that they satisfy a three-part test to

be considered an independent contractor: (1) the driver is free from direction or control over the performance of his services, both under contract and in fact; (2) the driver's services are outside the usual course of business of the company or outside of the company's places of business; and (3) the driver is customarily engaged in an independent business. While still in its early stages, the bill certainly bears watching as to its progress this time around.

And finally, the worker misclassification issue seems to be popping up in some other unexpected places. Just last week, Indiana State Senator Waterman issued a press release discussing worker misclassification in Indiana and asking for the public's help to identify those workers who may be misclassified. The Indiana Department of Labor has created a special website to educate the public and provide a vehicle for tips on possible company violators. While it does not specifically target the transportation sector, worker misclassification is clearly on the radar in Indiana and the Indiana legislature may be gearing up for introduction of new legislation to address the issue. This type of activity should be on our radar screens, as well.

All this activity must be monitored closely, as the efforts at erosion of the independent contractor model continue and gain traction. Should you have any questions or concerns about how some of these initiatives may affect your IC program, we here at Benesch would be happy to discuss it with you.