

Trucking

Incorrectly Classifying Port Truck Drivers As Contractors Is Costly, New Report Says

In the past three years, a growing number of U.S. port truck drivers have filed complaints with state and federal enforcement agencies to challenge employers that classify them as independent contractors when they are actually employees, labor advocates said in a report released Feb. 19.

Jared Bernstein, senior fellow at the Center on Budget and Policy Priorities, said in the report that the development reflects “a beginning of a story about economic justice, as cases against misclassifying employers are being brought and being won.”

“The Big Rig Overhaul: Restoring Middle-Class Jobs at America’s Ports Through Labor Law Enforcement” is a follow-up analysis to a report released in late 2010 (235 DLR A-9, 12/8/10). The new report highlights various legal actions that are beginning to generate monetary penalties against employers in the trucking industry.

In California, which has the largest share of the 75,000 port truck drivers nationwide, penalties for misclassifying employees as independent contractors have amounted to some \$850 million a year in potential liability, said Bernstein, a former chief economic adviser to Vice President Joe Biden. Bernstein was one of several speakers who discussed the report during a Feb. 19 conference call with reporters.

“Given the positive findings from already-adjudicated complaints and the growing number of pending driver complaints, these filings have the potential to be transformative,” the report’s authors—Rebecca Smith, Paul Alexander Marvy and Jon Zerolnick—said in their analysis. “The industry’s potential liability for the labor and tax law violations these complaints address runs in the billions of dollars.”

Smith is deputy director of the National Employment Law Project, an advocacy organization focused on improving economic opportunities and security for working families. Marvy is an attorney and researcher with the Change to Win Strategic Organizing Center, a coalition of labor unions that addresses wage, health care and retirement issues, among others, in the private sector. Zerolnick is campaign director for the Los Angeles Alliance for a New Economy’s Clean and Safe Ports project, an advocacy organization.

NELP, Change to Win and the Los Angeles Alliance for a New Economy produced the report.

Report: Most Port Truck Drivers Misclassified. Smith said during the conference call that “as companies turned to an independent contractor model after 1980, jobs that once sustained families became poverty-level jobs, where workers are required to front their own costs.”

Today, at least 80 percent of port truck drivers are paid by the load they haul, she said, and few have any employee benefits or workplace protections.

The report found that about 49,000 of the nation’s 75,000 port truck drivers are misclassified as independent contractors.

“The independent contractor model means workers lose out on basic benefits like workers’ compensation and unemployment insurance,” Smith said, “or lose the right to form a union.”

By treating employee drivers as independent contractors, the report said, “port trucking companies are violating a host of state and federal labor and tax laws, including provisions related to wage and hour standards, income taxes, unemployment insurance, organizing, collective bargaining and workers’ compensation.”

The report found that port drivers have filed about 400 complaints with the California Division of Labor Standards Enforcement for wage-theft violations related to misclassification. The authors said penalties in 19 cases that have been adjudicated by the DLSE have averaged \$66,240 per driver, amounting to \$4,266 per driver per month covered by the claim.

“Claims in pending complaints we have reviewed average a little over \$127,000 per driver, amounting to \$5,072 per driver per month,” the report said.

Hefty Penalties for Violations. Marvy said that extrapolating from existing claims made under California state law, port trucking companies operating in that state are liable for wage and hour violations of \$787 million to \$998 million each year.

The authors estimated that the industry’s total federal and state liability for unemployment insurance fund contributions, workers’ compensation premiums, and income tax payments amounted to about \$563 million annually.

“Total quantifiable costs of misclassification nationally—tax losses plus wage and hour violations—run to \$1.4 billion annually with non-quantified costs

likely exceeding the figure significantly,” the report said.

Marvy said during the conference call that non-quantified costs include the community health impacts of concentrated diesel pollution and the effects on port trucking firms that do abide by state and federal laws related to worker misclassification.

Earlier Report Said Business Model Exploitative. The earlier 2010 report, “The Big Rig: Poverty, Pollution and the Misrepresentation of Truck Drivers at America’s Ports,” released by NELP and the Change to Win labor coalition, described a business model that exploited drivers, kept older, high-polluting, heavy-duty diesel trucks on the roads longer, and cost the government billions of dollars in lost taxes.

“We wrote this follow-up report because the enforcement picture has radically changed in the last three years,” Smith said. “Drivers are challenging employers, striking, waging legislative campaigns and filing complaints.”

She added that courts in California, New Jersey and Washington state increasingly are agreeing that the typical port driver is illegally classified as an independent contractor.

“But we are seeing that with enforcement these ingrained, illegal practices can be turned around,” Smith

said, citing three recommendations highlighted in the report:

- Improve the effectiveness of state and federal enforcement agencies by prioritizing high-impact investigations, adequately funding enforcement agencies, and increasing protections against retaliation against workers.

- Increase awareness of the scope, costs and consequences of employee misclassification by studying its incidence and refining estimates of related costs.

- Update labor and tax laws to reflect current employment practices, including passing the federal Payroll Fraud Prevention Act (S. 770), the Clean Ports Act of 2013 (S. 1435) and the Fair Playing Field Act of 2012 (S. 2145).

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