

Justice for Port Truck Drivers

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As misclassified “independent contractors” at Uber, Fed Ex, and port trucking companies across America demand their rights as employees and an end to pervasive wage theft...

CA Labor Commissioner Rules on Landmark Misclassification & Wage Theft Case; Orders \$6.9 Million in Stolen Wages Paid to 38 Misclassified Truck Drivers at Leading Port Trucking Company

Ports of Los Angeles/Long Beach, CA – On Dec. 14, 2015, the California Labor Commissioner determined that 38 drivers at leading port trucking company Pacific 9 Transportation, which hauls containers from the twin ports of Los Angeles and Long Beach for some of America’s premiere brands – including Costco, Goodyear Tires, Ugg Boots, and Microsoft – are in fact employees, not independent contractors, and ordered Pac 9 to pay them nearly [\\$6.9 million in stolen wages](#). The landmark ruling marks the first time that the Labor Commissioner has scheduled back-to-back hearings for individual wage theft claims at a single company, and comes as Pac 9 drivers continue their sixth – and indefinite – strike to protest unfair labor practices, including [pervasive misclassification](#) at the company, which began on July 21, 2015.

“We have finally had our day in court and we are extremely grateful that the government has realized that it isn’t just a handful of drivers that are misclassified – it is all of us. We aren’t going to back down now. We will continue suing and striking these companies until they end their unfair treatment and the industry abandons the misclassification scheme that allows these trucking companies to steal our wages and defraud the government,” said Daniel Linares, a misclassified port truck driver with Pacific 9 Transportation.

“Misclassification, wage theft, and tax fraud has infested the port trucking industry, and the drivers are grateful to the California Labor Commissioner for scheduling back-to-back hearings in these cases. History has been made and change is on the horizon. Companies like Shippers Transport Express and [Eco Flow Transportation](#) have converted to an employee model and it is no longer “if” but “when” the [\\$12 billion drayage industry](#) will comply with the law,” said Fred Potter, International Vice President, International Brotherhood of Teamsters and Director of the Teamsters Port Division.

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The Road to Justice

- In March 2014, after an extensive investigation, Region 21 of the National Labor Relations Board (NLRB) announced a [settlement agreement](#) with Pac 9 that paved the way to unionization for its drivers. In that settlement agreement Pac 9 agreed that its drivers were in fact illegally misclassified and would be recognized as legal employees, therefore entitled to federal labor law protections under the National Labor Relations Act (NLRA). Pac 9 subsequently violated the terms of the settlement agreement by continuing their misclassification scheme and the NLRB withdrew the agreement.
- In July 2015, Pac 9 drivers began their [sixth strike](#) to protest ongoing labor law violations – and have remained on strike ever since.
- Beginning on July 27, 2015, the California Division of Labor Standards Enforcement (DLSE) began an historic series of thirty-eight (38) back-to-back “Wage and Hour” hearings for the 38 “independent contractor” drivers from Pac 9.
 - The hearings were held despite the company’s quixotic efforts to stay the hearings, filing two separate and unsuccessful motions in Superior Court to stay the hearings, appealing those rulings all the way to the Superior Court to try and stop the hearings – where they were ultimately unsuccessful – allowing the drivers’ voices to be heard.
- On Dec. 14, 2015, the DLSE ruled in favor of the drivers, then on Dec. 18, 2015, a California Superior Court judge denied Pac 9’s petition to compel arbitration.

Summary of Decision

On December 14, 2015, the Long Beach office of the California Labor Commissioner (Department of Labor Standards Enforcement – DLSE) issued an Order, Decision, or Award (ODA) in the case of wage theft claims filed by 38 drivers for Pacific 9 Transportation, Inc. (Pac 9). In the 299-page written opinion, the Labor Commissioner determined that all 38 of the drivers were employees, not independent contractors and orders Pac 9 to pay its drivers almost \$7 million.

Background

The Labor Commissioner’s office issued this decision following six weeks of back-to-back individual hearings held from July 27 – Sept. 10, 2015. The drivers had filed their claims between June 2013 and July 2014. Pac 9 now has 15 days from the time of service to appeal the decisions, in which case it would be required to post bond in the amount of the award. If it does not appeal, then the decisions become final and enforceable as a judgment in a court of law.

Employee Status

Before making a determination regarding wages owed, the Hearing Officer first had to determine whether or not the drivers worked as employees, since the Labor Commissioner’s jurisdiction is limited to disputes between employers and employees (not independent contractors). In determining employee status, the Labor Commissioner applies what is known as the “Borello Test” – a series of factors weighed to determine what the actual working relationship is. It includes issues such as how much control that an employer exercises over its workers along with factors such as whether the worker’s duties are an integral part of the business operations.

The ODA includes a thorough and extensive examination of the employee status issue: 129 pages in all are dedicated to outlining the testimony and evidence presented by the 38 drivers and the company’s 10 witnesses as to whether or not the drivers were employees.

After considering all of the testimony and evidence submitted, the Hearing Officer concluded that all 38 drivers were, in fact employees, not independent contractors.

Stolen Wages

After determining that the drivers were employees of Pac 9, the Hearing Officer examined the testimony and evidence presented to substantiate the wage theft claims made by the drivers to arrive at her decision: **The total sum of the amounts that the Labor Commissioner is ordering Pac 9 to pay its drivers comes out to \$6,926,278.84.**

- The average individual award is \$182,270.50
- The largest individual award amount is \$386,703.14

Specifically, Pac 9 owes its drivers for the following:

- **Unlawful Deductions.** The Labor Commissioner determined that Pac 9 owes its drivers for its business expenses that it unlawfully deducted from its drivers' weekly paychecks for truck rental payments, truck insurance, registration, DTR fees (to enter the Ports of LA and Long Beach), parking, inspections, permits and license fees, fuel, and road taxes.
- **Liquidated Damages:** Under the California Labor Code, when employees are paid less than minimum wages, they are entitled to recover "liquidated damages" in an amount equal to the wages unlawfully unpaid, plus interest. The Labor Commissioner awarded drivers liquidated damages for all of the hours that drivers were found to have been paid below the minimum wage. The award amounts varied based on the number of hours worked by each driver, and their gross pay, with one driver awarded over \$25,000.
- **Reimbursable Business Expenses:** The Labor Commissioner also ordered that Pac 9 owes its drivers for out-of-pocket expenses that they incurred, including fuel, truck repairs, and maintenance.
- **Meal and Rest Periods:** The Labor Commissioner also found that Pac 9 had not provided its drivers with legally mandate 30 minute meal breaks or 10 minute rest breaks, and ordered that Pac 9 must pay its drivers meal and rest period premium pay for missed meal periods.
- **Interest and Waiting Time Penalties:** Pac 9 also owes its drivers interest for the unpaid wages. Drivers who had been fired or quit and were no longer working at Pac 9 as of their hearing date are also owed "waiting time penalties," which consists of 30 days' pay at their daily rate.

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