

Overview of port trucking misclassification cases

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Drivers at the Ports of Los Angeles and Long Beach have been challenging their misclassification as “independent contractors” and exercising their rights as employees. They have been engaging in collective action at the courts, in their truck yards and at the ports – including 16 strikes in the last five years – and bringing their cases before government agency officials. It is estimated that there have been legal misclassification claims pursued on behalf of at least half of the misclassified drivers at the port— either by drivers filing individual wage claims or being part of class action lawsuits.

Upon investigating the facts, multiple agencies and courts at both the state and federal levels have determined that drivers are, in fact, employees and therefore protected by employment and labor laws. Outlined below is a brief summary:

Misclassification and Wage Theft Claims

Labor Commissioner claims

Since 2011, port truck drivers have filed at least 1,000 claims with the CA Division of Labor Standards Enforcement (DLSE). Of those, the Labor Commissioner’s office has issued determinations in at least 448 cases, finding that drivers were, in fact, employees and therefore owed over \$50 million in stolen wages and penalties. There are many cases awaiting hearings. Approximately 350 cases filed appear to have been settled prior to hearing or were transferred to court or private arbitration.

Private litigation

Drivers have also been exercising their rights as employees through the court system. Drivers at virtually every market-leading company at the ports have joined class-action suits for misclassification and wage theft, with more than 48 such suits filed. Several of these cases have recently settled, although the persistent misclassification leaves these companies vulnerable to new claims. In addition to the class action suits, drivers have also filed dozens of individual or “mass-action” suits involving multiple plaintiffs.

Labor Code violations

All of the above cases – DLSE claims, along with class action, “mass-action,” and individual lawsuits – are seeking to address violations of the California Labor Code, including unlawful deductions and unreimbursed expenses, and failure to provide meal and rest breaks. Recent cases also include damages for unpaid “nonproductive” hours worked, such as time spent inspecting trucks, under a new CA piece rate law (AB 1513). Most of the private suits include other causes of action, including willful misclassification and violations of the CA Unfair Competition Law.

Agency Enforcement and Employee Determinations

In addition to the courts and the DLSE, other state and federal agencies have found port drivers to be employees upon conducting investigations into labor, employment, and tax laws. These decisions include the following:

Federal government action

- ***National Labor Relations Board (NLRB):*** In 2017 an Administrative Law Judge (ALJ) of the NLRB found Intermodal Bridge Transport (IBT) drivers to be misclassified and that this misclassification is a violation of the National Labor Relations Act (NLRA). Most recently, on September 12, 2018 another ALJ issued a decision finding that XPO Cartage drivers are employees and that the company violated workers’ rights, including by interrogating an employee for his union support.

Additionally, Region 21 of the NLRB has made merit determinations that drivers from at least four other major port trucking companies were employees – not independent contractors.

- **US Department of Labor (DOL):** The DOL conducted an investigation of a market-leading port trucking company for misclassification, which resulted in a 2014 consent judgment and order in which the presiding federal judge found the company's California drivers to be employees and ordered it to reclassify them (*Thomas E. Perez, v. Shippers Transport Express, Inc.*, Case No. 2:13-cv-04255-BRO-PLA).

California state government action

- **CA Employment Development Department:** The California Employment Development Department has issued individual employee determinations in the cases of at least 45 port drivers.
- **CA Attorney General:** Between 2008 and 2009, the CA Attorney General filed lawsuits against six area port trucking companies, five of which were settled. The sixth suit, against Pac Anchor, has moved forward following a unanimous 2014 ruling by the California Supreme Court that found that the case was not preempted by federal law. The US Supreme Court declined to review that decision in 2015, clearing the way for the original case to proceed. The case is currently on hold as a result of Pac Anchor's bankruptcy proceedings. (*The People of the State of California v. Pac Anchor*, Case No. BC397600.)

City government action

- **Los Angeles City Attorney:** On January 8, 2018, the Los Angeles City Attorney filed lawsuits against three port trucking companies owned by NFI/Cal Cartage, whose trucking enterprise is the largest at the Ports of LA and Long Beach, for violating the Unfair Competition Law (UCL) by misclassifying port truck drivers as independent contractors, evading their obligation to provide benefits to drivers and pay relevant taxes (*The People of the State of California v. CMI Transportation*, Case No. BC689321; *The People of the State of California v. K&R Transportation*, Case No. BC689322; *The People of the State of California v. California Cartage Express*, Case No. BC689320)
- **Los Angeles Office of Wage Standards:** Port drivers at two NFI/Cal Cartage companies filed minimum wage claims against their employer for violations of the City's Minimum Wage Ordinance. In October 2018, the Office of Wage Standards requested the Bureau of Public Works to issue a subpoena to obtain payroll information necessary to conduct an investigation of wage theft at K&R Transportation. The investigations remain pending.