

## Overview of port trucking misclassification cases

Drivers at the Ports of Los Angeles and Long Beach have been exercising their rights as employees, challenging their misclassification as “independent contractors.” They have been engaging in collective action at the courts, in their truck yards, and bringing their cases before government agency officials. 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 **875** claims with the CA Department of Labor Standards Enforcement (DLSE). Of those, the Labor Commissioner’s office has issued determinations in at least **376** cases, finding that drivers were, in fact, employees and therefore owed over **\$40 million** in stolen wages and penalties. There are about another 150 pending claims that are still awaiting hearings. The remaining approximately 350 cases filed appear to have been settled prior to hearing or were transferred to court or private arbitration

#### ***Private litigation***

In addition, drivers have been exercising their rights as employees through the court system. Drivers at virtually every market-leading company at the ports have filed class-action suits for misclassification and wage theft. There have been over 30 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):*** Region 21 of the NLRB has made merit determinations that drivers at least six 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, is moving forward following a unanimous 2014 ruling by the California Supreme Court that found that 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. A trial is now scheduled for September 11, 2017 (*The People of the State of California v. Pac Anchor*, Case No. BC397600).