

Misclassification of Port Truck Drivers

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What is Misclassification?



Misclassification is calling workers “independent contractors” when they should be called “employees.”

Misclassification is illegal.

Also called “payroll fraud”

Impact of Misclassification

- Workers lose wages, benefits, protection of basic employment laws;
- States lose income, workers' compensation and unemployment insurance revenue;
- Federal government loses revenue;
- Law-abiding employers lose.



Independent contractors and employees

Employee

- Minimum wage and overtime
- Health and Safety protection
- Protection against discrimination
- Workers compensation
- Unemployment insurance

Independent Contractor

- ~~Minimum wage and overtime~~
- ~~Health and Safety protection~~
- ~~Protection against discrimination~~
- ~~Workers compensation~~
- ~~Unemployment insurance~~

“independent contractor” is for those who are truly in business for themselves – NOT in the business of others

In what industries does misclassification occur?

- Construction;
- Janitorial;
- Technology;
- Transportation;
- Cable installers;
- Home care;
- Theater and film;
- Delivery



Port Truck Drivers: An Overview

- Approximately **75,000** port truck drivers nationwide
- **25,000** in California
- Transport +/- 250 million metric tons of imported goods worth \$900 billion/year



Chronicle / Paul Chinn

Port Truck Drivers Then and Now

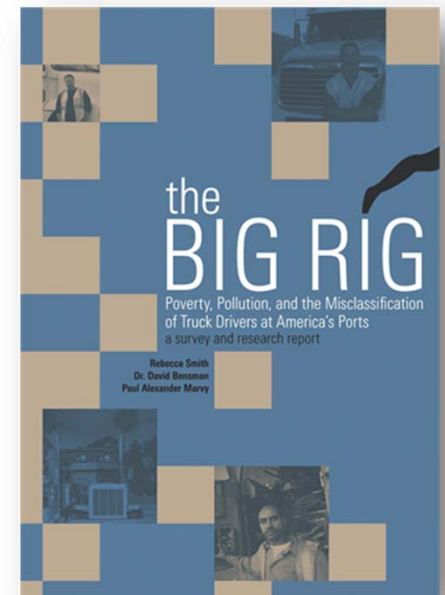
Wages in port trucking industry fell 30% from 1980 to 1995, after deregulation

- **80-90%** of drivers are now paid by the load
- Today's drivers earn about **\$12 per hour** and
- Drivers must **pay** the **truck lease, fuel, insurance, and maintenance expenses**
- Average **59 hours** work week
- **Median earnings** net of truck expenses:
 - ✓ \$28,783: Independent Contractors
 - ✓ \$35,000: for Employee Drivers

The Big Rig – 2011

Based on extensive worker interviews and using IRS definition of “employee”, we found:

- Strict controls – how, when, where, and in what sequence work is performed
- Drivers financially dependent on trucking companies - one employer at a time, no service to others, unilateral control of wages
- Drivers’ work integral to trucking businesses – drivers’ job IS the business of the company



The Big Rig Overhaul- 2014 – reviewed enforcement decisions finding port truck driver employees



- California Department of Labor Standards Enforcement (DLSE) –
- California EDD
- New Jersey Department of Labor and Workforce Development –
- Washington Labor & Industries (L&I) - Six audits, four found misclassification
- Washington State Courts
- United States Department of Labor
- Internal Revenue Service – ruled driver an employee
- National Labor Relations Board (NLRB)

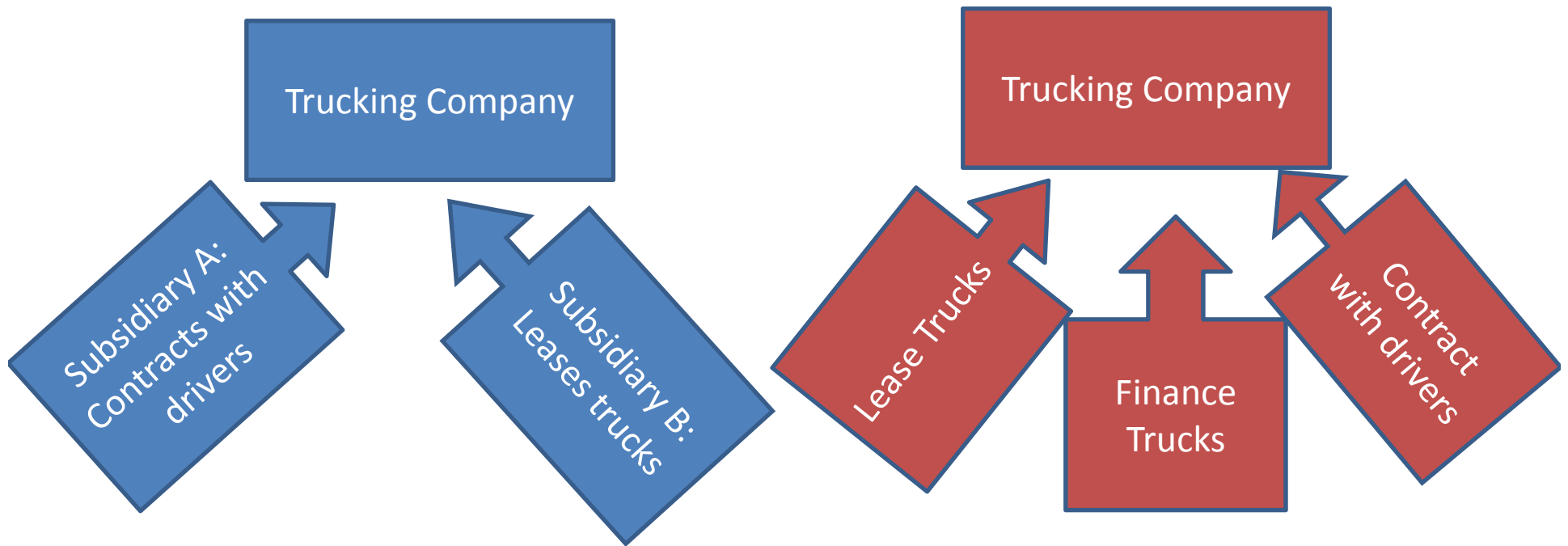
Current status of claims – July 2015

- DLSE – more than 500 claims filed; more than 100 decisions;
- EDD – individual decisions, audits pending
- Private litigation – at least a dozen cases, 1 settled;
- 3 companies have reclassified drivers; in two of those, drivers have voted to unionize;
- Federal court has ordered reinstatement of drivers after retaliation.

Court and agency decisions: Themes

- Drivers' work is **integral** to the company's business
- Drivers **not in business** for themselves: not allowed to drive for others, **no say in pay, no clients**
- Company provides all supplies, equipment and tools required to operate a business, then charges the worker for them. **"The defendant operates a trucking business on the expense of the Plaintiff."**

Court and agency themes: interconnected contracts, two models



“I am a believer in free markets. This was not a free and open market.”

- Judge Michael P. Vicencia, Los Angeles Superior Court (2013).

Tax Losses due to misclassification: Federal Tax Losses



Federal Tax Losses Due to Misclassification of Port Drivers				
Misclassified Drivers 49,331	Avg. Wages ⁷⁹ \$33,081	Earned Wages \$1,631,925,427	Reported Wages \$1,256,582,579	
Tax	Rates	Tax Liability	Reported Liability	Tax Loss
Social Security	12.40%	\$202,358,753	\$155,816,240	\$46,542,513
Medicare	2.90%	\$47,325,837	\$36,440,895	\$10,884,943
			Total Loss	\$57,427,456

Unemployment Insurance System Losses Due to Misclassification of Port Drivers

State	Misclassified Drivers	Federal Wage Base	Federal Rate	Federal Losses	State Wage Base	State Rate	State Loss
California	16,400	\$7,000	1.2%	\$1,377,600	\$7,000	3.40%	\$3,903,200
New Jersey	4,592	\$7,000	1.2%	\$385,728	\$30,900	2.98%	\$4,231,953
Washington	4,264	\$7,000	0.6%	\$179,088	\$33,081	1.97%	\$2,780,241
Georgia	3,936	\$7,000	1.2%	\$330,624	\$9,500	2.78%	\$1,039,498
Florida	3,936	\$7,000	1.2%	\$330,624	\$8,000	2.70%	\$850,176
Texas	2,952	\$7,000	0.6%	\$123,984	\$9,000	2.70%	\$717,336
Virginia	2,624	\$7,000	0.6%	\$110,208	\$8,000	2.50%	\$524,800
Puerto Rico	1,968	\$7,000	0.6%	\$82,656	\$7,000	4.30%	\$592,368
South Carolina	1,968	\$7,000	0.6%	\$82,656	\$12,000	3.40%	\$474,918
New York	787	\$7,000	1.2%	\$66,125	\$10,300	4.10%	\$332,435
Others	5,904	\$7,000	0.9%	\$371,952	\$13,478	2.94%	\$2,343,037
Total Federal Losses				\$3,069,293	Total State Losses		\$17,789,961
						Total Losses	\$20,859,254

Workers' Compensation Losses (national aggregate)



Workers' Compensation Premium Losses Due to Misclassification of Port Drivers				
Misclassified Drivers	Hourly Workers' Compensation Rate	Avg. Hours per Week	Est. Weeks per Year	Estimated Premium Loss
49,331	3.3315	59	50	\$484,823,334

Your Questions?

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The Big Rig: <http://www.nelp.org/page/-/Justice/PovertyPollutionandMisclassification.pdf?nocdn=1>

The Big Rig Overhaul:
<http://www.nelp.org/page/-/Justice/2014/Big-Rig-Overhaul-Misclassification-Port-Truck-Drivers-Labor-Law-Enforcement.pdf?nocdn=1>