

# 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 Chin

# Port Truck Drivers Then and Now

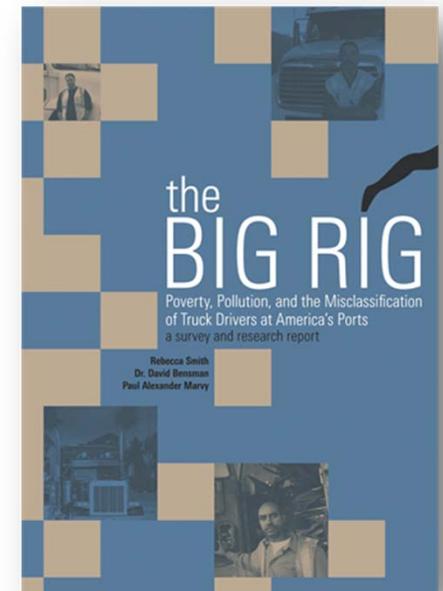
**Wages in port trucking industry fell 30%** from 1980 to 1995, after deregulation

- **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)

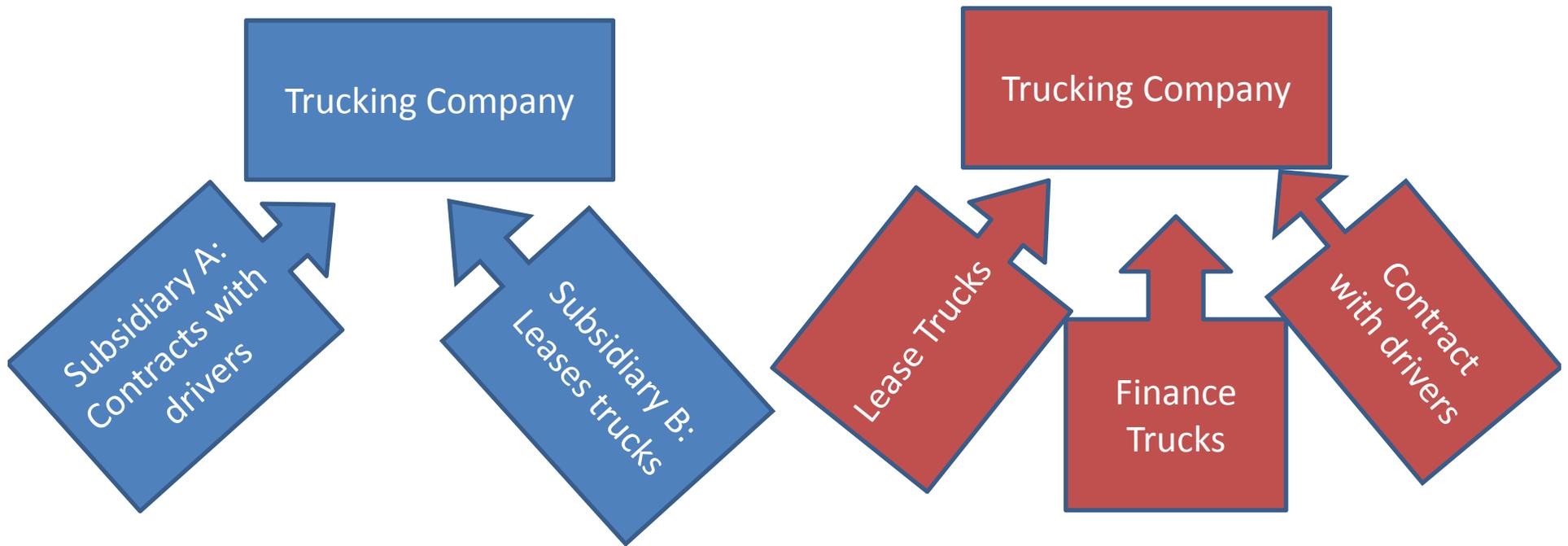
## **Current status of claims – July 2015**

- 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				
<b>Misclassified Drivers</b>	<b>Avg. Wages<sup>79</sup></b>	<b>Earned Wages</b>	<b>Reported Wages</b>	
49,331	\$33,081	\$1,631,925,427	\$1,256,582,579	
<b>Tax</b>	<b>Rates</b>	<b>Tax Liability</b>	<b>Reported Liability</b>	<b>Tax Loss</b>
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
			<b>Total Loss</b>	<b>\$57,427,456</b>

## 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
<b>Total Federal Losses</b>				<b>\$3,069,293</b>	<b>Total State Losses</b>		<b>\$17,789,961</b>
<b>Total Losses</b>							<b>\$20,859,254</b>

# 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>