



Policy Position Paper

access to a port facility based on their failure to comply with port-mandated rules relating to financial capacity D Q G W U X F N P D L Q W H Q D Q F H) X U W K H U Clean Truck Program, the U.S. District Court in Central California issued an injunction on Aug. 23, 2013 blocking enforcement of the off-street parking, placarding, and employee-driver requirements.

With support from IANA, in Dec. 2016 the California Trucking Association (CTA) filed a lawsuit in the Orange County Superior Court against California officials and G H S D U W P H Q W V I R U Y L R O D W L Q J W K H and denying due process to businesses by attempting to change the legal relationship between owner-operators and trucking companies. CTA argued that drivers who own or lease trucks should not be considered employees of the carriers they work with but instead are independent contractors. A California district judge dismissed the suit, ruling that truckers should be categorized as employees unless they meet specific requirements to qualify as independent contractors. Following this decision, CTA argued the policy is in violation of federal law and filed a petition to appeal.

There have also been several lawsuits seeking to overturn stricter state classification tests, which the plaintiffs argue should be preempted by federal laws such as the FAAAA. In 2018, the California Supreme Court ruling in the Dynamex Operations West v. Superior Court of Los Angeles case established new worker classification criteria, making it harder for carriers to classify their drivers as independent contractors in the state. The stringent criteria N Q R Z Q D V W K H ³ \$ % & W H V W ´ K D V been the subject of separate lawsuits filed by the Western States Trucking Association (WSTA) and CTA. In March 2019, the U.S. District Court for the Eastern ' L V W U L F W R I & D O L I R U Q L D G L V P L V V H G : 6 7 \$ ¶ V V X L W 7 K H F R X U W ruled that since the Dynamex decision had an indirect rather than direct effect on rates it is not preempted by the FAAAA. On April 16, 2019, WSTA filed an appeal against the dismissal. Legislation to codify the Dynamex U X O L Q J L Q V W D W H O D Z S D V and G i n & D O L I R U Q L D ¶ V 6 W D W H \$ V V May 2019 and awaits consideration in the Senate.

In January 2019, the National Labor Relations Board issued a ruling returning to a 2014 classification standard for determining if a driver is an independent contractor or an employee of the company where they F R Q V L G H U ³ H Q W U H S U H Q H X U L D O R S S R U W X Q L W \ ´ D V R Q H R I W K H N H \ F U L W H U L D L Q G H W H U P L Q L Q J Z R U N H U V ¶ F O D V V L I L F D W L R Q 6 R P H industry experts report this ruling could make it easier for fleets to classify their drivers as independent contractors.

A July 2018 guidance decision by the Department of / D E R U L Q D Q X U V L Q J F D V H I D Y R U H G F G I L P W I Q H L V K L L Q F X P W K M D 3 2 7 8 ¶ V Z K H Q H Y D O X classification, departing from guidance implemented in 2015 which held that "most workers are employees under the [Fair Labor Standards Act] broad definitions."

Potential Impact to Intermodal Freight Transportation Impact 1:

The employee-driver requirement of the 32 / \$ ¶ V concession plan would change the predominant owner-operator drayage model in use throughout the U.S. (estimated at 80% of the intermodal driver population) and potentially set a precedent for emulation at many other North American port facilities. Drayage rates and associated charges would likely reflect an increase to offset compliance costs of the requirement. There is also