

Leasing Could Be Roadblock for Trucking Companies

by **Howard Fine**

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Carson trucking executive Joshua Owen said the new state law cracking down on misclassification of independent contractors could be a big problem for some trucking companies at the ports.

Owen, president of Ability Tri-Modal Distribution Services Inc., said he feels his company is sheltered from the impact of the law because his drivers own their rigs. But he has been warning fellow trucking company owners who lease out trucks that they could be targeted under the new law.

“I’ve tried to tell other trucking company owners that they risk trouble if they lease the trucks to their drivers,” he said.

The issue of classification of truckers has been hotly disputed ever since the Port of Los Angeles – at the behest of a coalition of unions and environmental groups – approved a policy provision four years ago requiring thousands of independent truckers to become full-time employees of trucking companies. The policy was part of a larger initiative to reduce pollution at the ports by having truck owners upgrade to newer, less-polluting trucks. Mandating that truck drivers be employees of trucking companies would put the onus to switch to cleaner trucks on the companies, so they’d be responsible for maintaining the trucks.

But trucking companies and business groups claimed the real motive was to ease the way for unions to organize truck company employees. The companies challenged the employee requirement in court; last month, the Ninth Circuit Court of Appeals ruled that the port could not force trucking companies to hire their drivers as full-time employees. The port has decided not to appeal the case to the U.S. Supreme Court.

Owen said that outcome will likely dissuade state or federal agencies from pursuing enforcement actions against trucking companies like his where drivers own the trucks because they meet the Internal Revenue Service test for independent contractors.

But companies operating at either the Port of Los Angeles or the Port of Long Beach that lease trucks to drivers may not meet that test.

“Leasing trucks to the drivers indicates a significant enough degree of control that the drivers could be considered full-time employees,” Owen said. “This new law I think puts them at even greater risk.”

Union advocates said the new law will give state labor enforcement officials more strength to enforce misclassification cases.

“The typical port truck driver is an employee disguised as an independent contractor,” said T.J. Michels, spokeswoman for the Coalition for Clean and Safe Ports that sponsored the port policy and for a coalition of labor unions known as Change to Win. “We’re thrilled that with this law there’s now a new layer of enforcement to go after these trucking companies.”