States Attempt to End the Independent Contractor Business Model in Trucking

January 19, 2022

Owner-operators, legally classified as independent contractors, play a significant role in the American transportation and logistics network.[1]

Many states facilitate the independent contractor business model by softening the requirements to obtain that status. In 2021, Louisiana, Utah, and West Virginia each passed laws expanding the demographic of workers who may be classified as independent contractors, allowing those workers the flexibility to earn a living by providing services to various companies.[2] Georgia, Missouri, North Carolina, Oklahoma, and Texas are each considering similar legislation.[3] An equal and opposite reaction, however, exists in states like Massachusetts and California. Both have passed laws establishing a stringent "ABC Test" for independent contractor status, with the goal of reclassifying thousands of independent contractors as "employees" under state law.[4] This reclassification prevents workers and companies from negotiating rates on a job-by-job basis, and instead requires employers to provide an hourly wage or salary, overtime pay, and workers compensation benefits they would not have to provide to independent contractors.[5]

Under the ABC test, a worker must (a) be free from the control of the hiring entity in performing the work; (b) be performing work outside the usual course of the hiring entity's business; and (c) have their own trade or business of the same nature as the work they are hired to perform.[6] If any of these requirements are not met, that worker is considered an employee. Typically, independent contractors struggle to satisfy "Part B" of the test. Independent truck drivers, for example, are hired to perform the central function of a trucking company, and are therefore classified as "employees" under the ABC test.

As you can imagine, the trucking industry, and others, are fighting back. The Massachusetts Delivery Association (MDA), a non-profit trade organization, sued the Attorney General of Massachusetts, arguing that "Part B" of the ABC Test was preempted by federal law.[7] Specifically, the Federal Aviation Administration Act of 1994 (FAAAA) expressly prohibits any "State…[from] enact[ing] or enforc[ing] a law, regulation or other provision…related to a price, route, or service of any motor carrier… with respect to the transportation of property." [8] The MDA argued that Massachusetts did just that by applying the ABC test to same-day delivery services, and that those services should be exempted from the test. The U.S. District Court for the District of Massachusetts agreed, as did the First Circuit on appeal, holding that "Part B" of the test would "logically have a significant impact on… routes and services," and was therefore preempted by the FAAAA.[9]

The trucking industry advanced the same argument in California, with a different result. In *California Trucking Association, et al. v. Rob Bonta, et al.*, the Ninth Circuit held that the ABC test is not "significantly related" to price, routes, or services, because it "does not *bind, compel, or otherwise freeze into place* the prices, routes, or services of motor carriers."[10] According to the Ninth Circuit, the ABC test effects only a motor carrier's relationship with its workforce, an area not preempted by the FAAAA.[11]

There now exists a circuit split as to the applicability of the FAAAA's preemption clause to this stringent independent contractor classification test. Realizing this, the California Trucking Association has petitioned the Supreme Court for a writ of certiorari to resolve the conflict.[12] The Court seems poised to do so. On November 15, 2021, it invited the Solicitor General to provide her view of the case.[13] Should the Court decide to strike down the ABC Test as it applies to trucking companies and truckers, it will preserve the business model the trucking industry has used for decades.

[1] Jennifer Cheeseman Day & Andrew W. Hait, *Number of Truckers at All-Time High*, UNITED STATES CENSUS BUREAU (June 6, 2019), (stating that there are 351,821 self-employed drivers in the United States, whose businesses make up 88% of long distance trucking businesses in the Country).
[2] Richard Reibstein, *Is the US Supreme Court About to Dive into the Independent Contractor Misclassification Field?November 2021 IC Law Update*, JDSUPRA (Dec. 8, 2021).
[3] *Id.*
[4] *Id.*
[5] Cal. Lab. Code §§ 510, 3700; 454 Mass. Code Regs. 27.03; Mass. Gen. Laws c. 152 § 25A.
[6] Cal. Lab. Code § 2750.3 (West); Mass. Gen. Laws Ann. c. 149, § 148B (West).
[7] *Massachusetts Delivery Ass'n v. Healey*, 821 F.3d 187 (1st Cir. 2016).
[8] 49 U.S.C.A. § 14501 (West).
[9] *Healey*, 821 F.3d at 191.
[10] 996 F.3d 644, 649 (9th Cir. 2021) (emphasis added).
[11] *See Bonta*, 996 F.3d at 644.
[12] Reibstein, *supra*.
[13] *Id.*

Attorney Advertising. This material is for general informational purposes only and does not represent our advice as to any particular set of facts; nor does it represent any undertaking to keep recipients advised of all legal developments. Prior results do not guarantee a similar outcome. © 2026 MG+M The Law Firm