Federal Court terminates injunction that temporarily preserved the independent contractor status of California truckers

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Are you a trucker affected by AB5 in California? We want to hear from you! Tell us your thoughts by filling out the form at the bottom of this article. All submissions will be kept anonymous.

In a hearing Monday, Federal District Court Judge Robert Benitez formally lifted an injunction against the application of a California state law governing the classification of employees as "independent contractors" to the trucking industry.

Seventy thousand truckers are independent owner-operators and are therefore at risk of losing their ability to work in California under Assembly Bill 5 (AB5). This would include two-thirds of the state's port truckers.

The injunction had been in effect since December 31, 2019 and was issued in response to the enactment of AB5. This new statute had codified what is known as the "ABC Test" that makes it more difficult for companies to classify workers as independent contractors. The primary backers of AB5 were the unions who, with the assistance of the Democratic Party, obtained the passage of this statute as a means of greatly expanding the pool of dues-paying members.

AB5 served to codify a 2018 decision of the California Supreme Court, Dynamex Operations West, Inc. vs. Superior Court of Los Angeles. The Dynamex decision, and subsequently AB5 itself, requires the application of the "ABC test," under which a worker is presumed to be an employee unless the hiring entity can prove that the worker: (a) "Is free from the control and direction of the hiring entity in connection with the performance of the work;" (b) "Performs work that is outside the usual course of the hiring entity's business;" and (c) "Is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed."

Neither Dynamex nor AB5 directly addresses issues of workers' wages, benefits such as health insurance and retirement contributions, overtime pay, working conditions, or other social rights. This measure is narrowly focused on the issue of employee classification.

In many cases, workers are better protected with an "employee" status because of certain enumerated rights that oftentimes apply to this status, such as the right to paid vacations and sick leave, paid family and medical leave, employer-sponsored health insurance policies and retirement plans, unemployment insurance, and so forth. This, for example, would have been the case with Uber and other ride-share and gig workers, but gig employers successfully carved out an exemption for themselves in 2020 through the Proposition 22 ballot initiative.

In years past, some independent truckers took part in token work stoppages on the docks, organized by the Teamsters union, to demand that they be reclassified as employees. For the truckers, however, more was at stake than technical classification; they saw becoming employees as meaning regular, reasonable working hours, guaranteed hourly wages, pensions, healthcare and other benefits. None of this, however, is provided for under AB5, and their status under the law is very much up in the air.

The only thing that is known for certain is that if they want to continue as before, they will have to incur tens of thousands of dollars in additional costs by registering as independent businesses. Whatever arrangement is worked out by the trucking companies to comply with AB5, it is certain it will be to truckers' detriment and to the benefit of the companies; otherwise, the latter would have been pushing to be exempted just as Uber had.

Besides a large section of California's independent truckers, independent contractors include insurance agents, physicians, dentists, psychologists, veterinarians, lawyers, architects, engineers, private investigators, accountants, securities broker-dealers, investment advisers, and commercial fishermen.

However, AB5 made express exceptions for all of the professions listed above, as well as many others, but only for those truckers who work as subcontractors in the construction industry.

In September 2020, AB 2257 was signed into law by Governor Newsom, further expanding exceptions to the ABC rule for a long list of professions, including photographers, artists, freelance writers, translators, editors, copy editors, musicians, music producers and directors, other music industry

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trades, and other “individual performance artists” such as comedians and magicians. Truck drivers again were omitted.

Owner-operator truckers contract with trucking companies that provide access to routes and ports, and serve to limit and defray regulation and licensing requirements as well as insurance costs. Without this relationship, most owner operators could not afford to operate and would go bankrupt. Moreover as an “employee,” their income would be considerably reduced and they would be saddled with huge debt for their trucks for which they could no longer afford to maintain.

Rail workers, dock workers and airplane pilots are all classified as “employees.” They all play crucial roles in the supply chain, and are under the control of unions. The remaining link in the supply chain are the truckers. This explains why their “employee” status has become essential to meet the financial needs of Wall Street and the national security needs of the government.

Shortly after AB5 was passed in late 2019, the California Trucking Association (CTA) obtained the preliminary injunction. Judge Benitez who had ruled that the statute was preempted by the Federal Aviation Administration Authorization Act (FAAAA), which prevents states from enforcing a law related to a price, route or service of motor carriers.

On April 28, 2021, however, the Ninth Circuit Court of Appeals overruled Judge Benitez and ruled that AB5 was a generally applicable state law that was not preempted by the FAAAA. The Ninth Circuit’s ruling, however, was in conflict with a ruling from the U.S. Court of Appeals for the First Circuit with respect to a similar Massachusetts law.

Consequently this injunction remained in place, while the CTA petitioned the U.S. Supreme Court to resolve this conflict. The Teamsters union also joined with the State of California in defending the enforcement of AB5.

On June 30, the Supreme Court announced it had denied the CTA’s petition to review the case, ultimately sending it it back to Judge Benitez’s court to reverse his prior ruling.

The CTA promptly released a public statement that “California’s 70,000 owner-operators [will] have seven days to cease long-standing independent businesses.” The statement concludes, “The Legislature and Newsom Administration must immediately take action to avoid worsening the supply chain crisis and inflation.”

On July 13, 2022, in response to the imminent ending of this injunction, hundreds of owner-operator truckers held a convoy protest through the Ports of Los Angeles and Long Beach, slowing down traffic on multiple freeways. Other owner-operators picketed at the entrance to the port complex, which caused one terminal to close its gates early at the Port of Long Beach.

The following week, nearly 1,000 owner-operators blocked access to terminals at the Port of Oakland, which effectively shut down operations at the Port for five days. Operations at the Port resumed on July 23, 2022, but the stoppage had created a significant backlog.

These actions drew considerable hostility by the International Longshore and Warehouse Union (ILWU), which has been conspiring with the Pacific Maritime Association and the Biden Administration to keep 22,000 dockworkers on the job months after their contract expired. Significantly, around 100 Oakland dockworkers refused to cross the truckers’ picket lines, indicating considerable support for the truckers as well as frustration with being made to work without a contract. A top ILWU official denounced the truckers on business news channel CNBC, accusing them of endangering public safety.

On July 25, 2022, the Port of Oakland filed suit against the protesters, seeking a temporary restraining order and injunction to prohibit them from “illegally blocking marine terminal gates and halting international trade.” On Aug. 2, 2022, the Superior Court of California County of Alameda granted the temporary restraining order and a permanent injunction was issued on August 29, 2022.

In Monday’s ruling, Judge Benitez formalized the termination of his previously issued injunction, meaning that all owner-operator truckers have lost the independent contract status.

When this will be enforced is still in doubt, as the CTA has announced they will be filing other legal challenges that will likely delay enforcement. They also have renewed their appeals to Newsom and the Democrats in the state legislature, the same forces that are responsible for enacting the law and waging an unrelenting legal fight to enforce it.

The Teamsters issued a celebratory statement. “Today, drivers across California can rest easy knowing that trucking companies that have gotten away with misclassifying workers can no longer exploit their workers or the people of California to further their bottom line,” the email from Teamsters public relations agency Berlin Rosen said. “These companies are going to be held accountable, and drivers’ rights will be protected under the law.” Berlin Rosen is the same agency hired in 2015 by the United Auto Workers to help ram through a contract at Fiat Chrysler, later shown to have been the result of corporate bribes, after workers initially rejected the contract by a two-thirds margin.

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