



National Employment Law Project



From the National Employment Law Project & Change to Win

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REPORT: MISCLASSIFICATION EXPLOITS NATION'S PORT TRUCK DRIVERS, COSTS GOV'T BILLIONS AND POLLUTES ENVIRONMENT

Groundbreaking Survey of Largest U.S. Ports Concludes Typical Port Truck Driver is Misclassified as an Independent Contractor – and Paid Poverty-Level Wages, Denied Health Care & Other Employee Standards

Report Calls On U.S. Ports, Congress and Federal Gov't to Require Trucking Companies to Legitimately Employ Drivers, Take Responsibility for Trucks, and Clean Up Air

Dec 8, 2010 --- A new groundbreaking [study](#) of the U.S. port trucking industry finds that the nation's 110,000 port truck drivers, who move millions of cargo containers annually from port cities to store shelves across the country, are highly vulnerable to illegal employment classification schemes that subject them to poverty-level wages, frequent safety violations, and little autonomy from the employers who dictate their financial constraints. The report, conducted by labor market experts at the National Employment Law Project, Change to Win and Rutgers University, draws on in-depth interviews with drivers at the nation's major ports and concludes that the typical port truck driver is misclassified as an independent contractor. The study also concludes that the toxic diesel-truck pollution in the air of the nation's port regions is a direct result of the industry's adoption of misclassification as a business model.

"Trucking companies across the U.S. are rigging the game by forcing port drivers, who ship everything from tennis shoes to televisions across thousands of miles, into taking poverty-level wages. This report sheds light on an underground economy in which companies are skirting a host of obligations in order to profit greatly – at great cost to the people they hire, the government, the public, and other businesses that play by the rules," said **Dr. David Bensman, Professor in the School of Management and Labor Relations at Rutgers University** and a co-author of the report.

[The Big Rig: Poverty, Pollution and the Misclassification of Truck Drivers at America's Ports](#) reflects findings from interviews of port truck drivers at 39 companies in Seattle, Oakland, Los Angeles, Long Beach, New York and New Jersey and hundreds of their employment documents, including truck leases, pay stubs, insurance provisions, safety policies, drug and alcohol policies, meeting agendas, log books, and job applications. Combined with an aggregation of 10 prior surveys of 2,183 workers at seven major ports and a review of the industry's structure and economics since its deregulation thirty years ago, it is the first-ever systematic examination of misclassification across an entire U.S. industry.

"The conditions under which these truckers work have virtually nothing in common with a true independent business. Trucking companies dictate how, when and where drivers do their work – leaving the drivers financially and operationally dependent on their employers day-in and day-out. Labeling them 'independent' is just a way for companies to sneak out the back door and skirt their responsibilities," said co-author **Rebecca Smith, an attorney with the National Employment Law Project**.

The report comes at a time when misclassification – of grocery deliverers, farm workers, janitors, home care workers, construction workers and more – is under increasing scrutiny. A February 2009 U.S. Treasury Inspector General estimate found that the unpaid Social Security, Medicare, and Unemployment Insurance taxes that companies skirt due to misclassification have alone cost the nation \$15 billion, and President Obama has made curbing misclassification [a key part of his FY2011 budget](#) as a means to save the government money and promote good jobs.

The report estimates from the prior surveys of 2,183 drivers in seven major ports that 82 percent of port truck drivers are treated as independent contractors, making it the dominant business model and profit-maximizing strategy in the sector. The report also finds that:

- Trucking companies make drivers responsible for all truck-related expenses including purchase, fuel, taxes, insurance, maintenance, and repair costs;
- Port truck drivers work long hours for poverty-level wages. The average work week among surveyed drivers was 59 hours. Average net earnings before FICA, income, and other taxes was \$28,783 per year for contractors and \$35,000 per year for employees. Minimum wage violations appear widespread;
- Surveyed drivers classified as independent contractors reported average net incomes 18 percent lower than employee drivers. Independent contractors were two-and-a-half times less likely than employee drivers to have health insurance and almost three times less likely to have retirement benefits;
- Economic pressures encourage widespread evasion of safety regulations. Drivers commonly use dangerous and illegal equipment, and safety limits on working hours and vehicle weights are routinely ignored;
- Low-wage independent contractors bear the industry’s capital expenses by owning and operating the only equipment they can afford – the oldest diesel trucks on the road. The industry’s adoption of misclassification as a business model is a direct source of the environmental and public health crises surrounding the nation’s ports

“Misclassification drains public coffers through uncollected taxes, it puts law-abiding businesses at a competitive disadvantage, and it leaves workers vulnerable without basic protections – not to mention the safety and environmental hazards it creates. We need lawmakers, federal agencies and the ports to come together to tackle these pervasive and illegal business tactics that undermine the economy and the workers who help make it run,” said co-author **Paul Alexander Marvy of Change to Win**.

The report, which includes a foreword urging an end to the “sharecropping on wheels” by **Wade Henderson, President and CEO of The Leadership Conference on Civil and Human Rights**, urges U.S. ports to adopt uniform rules that require trucking companies to employ drivers and take ownership responsibility for trucks they operate. It calls on the Department of Labor, the IRS, and state enforcement agencies to implement comprehensive enforcement strategies of tax, employment, and safety laws in the port trucking industry. It also urges Congress to pass the Clean Ports Act of 2010 (H.R. 5967) to allow port authorities to address misclassification where it affects the environmental impacts, safety, or efficiency of port trucking operations.

Representative Jerrold Nadler of New York, sponsor of the Clean Ports Act, said today’s report “dramatically highlights some of the major issues hindering the cleanup of our nation’s trucks and ports. This new document will be very helpful in our collective efforts to properly classify truck drivers, to protect those drivers and port workers, to implement robust and lasting clean truck programs, and to bring our nation toward a future of clean and environmentally friendly ports. This report reminds us why it is so pressing to pass my legislation, the *Clean Ports Act*, and to make federal policy on this issue clear and up-to-date once-and-for-all.”