

Employee-Driver Mandates (Clean Truck Programs)

ISSUE TYPE	Regulatory (State/Local)/ Legislative (Federal)	KEY DATES	<p>Sept. 26, 2011 — Court rules independent contractor status is preempted by federal law</p> <p>June 13, 2013 — Supreme Court rules in ATA's favor regarding off-street parking plans and placards; declines to rule on port-mandated financial capacity and truck maintenance</p> <p>Aug. 23, 2013 — U.S. District Court issues permanent injunction against enforcement of POLA's CTP's employee-driver requirements</p> <p>Dec. 17, 2016 — CTA sues California officials claiming they violated public record laws in order to change the relationship between owner-operators and trucking companies</p> <p>Jan. 2017 — Federal judge in California grants a motion to dismiss CTA's lawsuit</p> <p>Apr. 30, 2018 — U.S. Supreme Court issues ruling in <i>Dynamex Operations West, Inc. v. Superior Court of Los Angeles</i> case establishing the ABC worker classification test in California</p> <p>Dec. 3, 2018 — California State Assembly introduces AB 5 to codify Dynamex decision</p> <p>Jan. 25, 2019 — NLRB issues a new standard for determining worker classification</p>
AGENCY	Port of LA/CARB		
STATUS	Active/Tracking		
DIVISION IMPACT	MC, Marine, 3PL		
INTERESTED PARTIES	ATA, OOIDA, NRDC		
		MOST RECENT ACTION	

Statement of the Issue

Around 80 percent of truck drivers serving the intermodal industry are classified as independent contractors and not as employees of a trucking company. The drayage operations business model favors the use of independent contractors as opposed to the use of employee-drivers. However, there have been attempts to mandate truckers be classified as employee-drivers instead. For example, in their Clean Truck Programs (CTP), the Ports of Los Angeles (POLA) and Long Beach (POLB) initially included an employee-driver requirement. Additionally, multiple court cases and bills have attempted to mandate this classification.

Policy Position – Adopted by the Board (11/14/10)

IANA should oppose attempts at the local, State or Federal level, to instill employee-driver mandates on the intermodal drayage industry. In addition, IANA should continue to support the efforts of the American Trucking Associations (ATA) in its attempts to defeat the

employee-driver requirement included in POLA's concession plan under its CTP. This support should take the form of advocacy activities and, if appropriate, financial contributions to a fund specifically-designated for this purpose.

Summary

Following the inclusion of an employee-driver requirement in POLA's and POLB's CTPs, ATA sued the ports. While POLB reached a negotiated settlement with ATA and removed its requirement that motor carriers accessing its facilities must utilize employee-drivers vs. owner-operators, the ATA and POLA did not reach an out-of-court agreement. After a series of appeals, on June 13, 2013, the U.S. Supreme Court unanimously sided with ATA, deciding that the Federal Aviation Administration Authorization Act (FAAAA) expressly preempts POLA's placard and parking requirements. However, the Court declined to issue a decision regarding a port's ability to suspend or revoke a carrier's

access to a port facility based on their failure to comply with port-mandated rules relating to financial capacity and truck maintenance. Further diminishing the POLA's 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 departments for violating the state's public record laws 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 known as the "ABC test" has 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 District of California dismissed WSTA's suit. The court 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* ruling in state law passed California's State Assembly in 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 consider "entrepreneurial opportunity" as one of the key criteria in determining workers' classification. Some 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 Labor in a nursing case favored considering "the totality of the circumstances" when evaluating worker 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 POLA's 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 speculation that the supply of intermodal drivers would decrease under an employee model, given the inherent nature and culture of independent contractors.

Impact 2:

The switch from owner-operators to employee-drivers would initiate a movement to unionize the port drayage community, which in turn, could result in drayage cost increases above and beyond the expense of compliant power equipment.

Impact 3:

A broader implication in the employee-driver issue would result from modifications to the FAAAA that would remove or temper the federal preemption of state and local regulations of interstate motor carriers' prices, routes or services. Proponents of employee-driver mandates support the elimination of federal preemption since it would facilitate the ability to incorporate such requirements in clean truck programs. The statute specifically provides that:

"A State, political subdivision of a State, or political authority of two or more States may not enact or enforce a law, regulation or other provision having the force and effect of law related to a price, route, or service of any motor carrier. (49 U.S.C. Section 14501(c) (1))."

In practice, the above preemption applies when such regulations are at odds with what the market dictates. In the case of intermodal drayage operations, the business model (i.e. the market) clearly favors the use of independent contractors vs. employee-drivers.