

PROLOGUE: THE INDEPENDENT CONTRACTOR AND MOTOR CARRIER OPERATIONS

Individuals who lease vehicles with driver service to motor carriers have existed since the 1930s, and the relationship in recent years has become a “burning issue” of whether such individuals are “employees” or “independent contractors” under federal and state statutes and administrative regulations related to a host of “employment entitlements” and “tax assessments”.

While the use of such individuals has not significantly changed in substance within the motor carrier industry, this has not been true in other industries where the use of independent contractors has increasingly grown.

Legislators, administrators, unions, and others have relied on classification abuses, primarily in the construction industry, to create the perception that the independent contractor relationship is essentially a “scam” to avoid employment taxes, unionization, the provision of any employment benefits, and have enacted and/or proposed laws and regulations which establish rigorous, if not inappropriate, tests to determine the “employment classification” issue and also provide for severe penalties for misclassification even if it were not intentional.

While the motor carriers contend that their operations are significantly different from construction and other industries under specific attack, it is not clear that the industry’s position that statutes and administrative regulations should be industry-specific, may fall upon deaf ears.

Also, not to be overlooked in the resolution of the “employment classification” issue is the fact that informed individuals who desire to be “their own boss” should be afforded the freedom and opportunity to do so even if they are ultimately unsuccessful. Many existing motor carriers were outgrowths of an independent contractor relationship. The motor carrier industry is one of the few left which offers a reasonable opportunity for individuals to become and grow as a legitimate small businessperson. Public policy should not be predicated on “avoidance or preclusion of failure,” but rather “facilitation of opportunity for success”.

The authors of the Articles in this Symposium issue have reviewed extensively the “employment classification” issue from a historical, business, and legal perspective and have offered meaningful solutions of the “employment classification” issue in the context of the motor carrier industry.

Professor Robert Hardaway, the Faculty Journal Advisor, Bridgette Miller, the Editor-in-Chief of the Journal, and other staff members of the Journal are to be commended for recognizing the immediate concern and action of body politics and industry members in this area of law and

recognizing that a symposium issue would be a significant contribution to the legal and business communities.

This Symposium Issue of the Journal continues its history of publishing periodic symposium issues concentrating on a significant aspect of transportation law.

It is hoped that this issue of the Journal will spark interest of its readers in this subject and lead to their sage participation in fashioning the future determination of answering the question "Employee or Independent Contractor?"

James C. Hardman, Esq.

Chairman, Editorial Advisory Board, Transportation Law Journal, University of Denver Sturm College of Law