

SB 338 (Gonzalez) Protecting Port Truck Drivers

SUMMARY

SB 338 is critical to protecting essential supply-chain workers during the COVID-19 pandemic and beyond. SB 338 would add trucking companies to an existing Division of Labor Standards Enforcement “bad actor” list if those companies do not provide required health and safety protections and benefits to their workers. Customers who contract with bad actors on this list are jointly liable for future violations. In addition, SB 338 requires companies to prove that they have fixed the underlying violation in order to get off the list, and specifically targets repeat offenders that systemically incorporate wage theft and deny worker protections as part of their business model.

EXISTING LAW

SB 1402 (Lara) required the CA Division of Labor Standards Enforcement (DLSE) to create and publicly post a list of ‘bad actor’ trucking companies, comprised of companies that have unpaid final judgments. Any company that contracts with a trucking company on this list is held jointly liable for new violations.

Joint liability of this kind is a critical tool to incentivize customers to hire good actors, and is commonly used in California law, especially in industries with widespread labor violations:

- Labor Code §2810 holds companies in six industries jointly liable for labor violations if they enter into financially insufficient contracts.
- Labor Code §2810.3 holds client employers jointly liable for labor violations by a temporary staffing company or labor contractor.
- Labor Code §1697.5 requires farm labor contractors to register and holds companies liable for contracting with an unlicensed farm labor contractor.
- Labor Code §§2673.1 and 2675 requires garment contractors to register and holds garment manufacturers liable for wages.

BACKGROUND/PROBLEM

Truck drivers in California may be either independent contractors or employees of trucking companies. However, misclassification, where drivers are denied both the rights of employees and the freedoms of true contractors, is rampant in the port trucking industry. A

2014 National Employment Law Project report found that some 49,000 of the 75,000 port truck drivers in the United States are misclassified as independent contractors. This misclassification is unlawful and was estimated to cost California drivers about \$850 million a year.¹

Numerous court and agency rulings, including many high-profile cases, have confirmed that misclassification is common practice in this industry.

- Since 2012, the DLSE has issued over 500 decisions finding that port trucking companies had misclassified drivers, ordering them to pay over \$50 million. Every case that has been heard in court on appeal has been upheld.
- In 2015, the California Labor Commissioner’s Office ordered Fargo Trucking to pay nearly \$9 million in back wages to 50 misclassified drivers.²
- Between 2015 and 2017, the DLSE filed eight decisions as final judgments in CA Superior Court, all finding that Container Connection had misclassified its drivers and owed them almost \$800,000. Container Connection eventually paid after the Labor Commissioner issued Stop Work Orders to enforce the judgments, but has not changed its business model.

Misclassification of this kind always harms workers—whether through wage theft or denying health and workers compensation insurance. During a pandemic, misclassification and systemically denying workers disability benefits, PPE, and other worker health protections can be deadly. A Brookings Institute report found that the transportation sector is one of the highest-risk for COVID-19.³

SOLUTION

SB 338 will protect the health and safety of essential port drayage truck drivers by including specified health and safety violations as criteria that would put trucking companies who commit such violations on an existing ‘bad actor’ list. Customers that hire trucking companies on this bad-actor list are jointly liable for future violations: this incentivizes customers to hire good actors and protects workers. SB 338 will also strengthen existing law by requiring companies to demonstrate through an audit that they have rectified the problem, and by adding previous offenders to the list when they receive further citations.

¹ <https://justice4ladrivers.net/BigRigOverhaul2014Finalsm.pdf>

² <https://www.usatoday.com/pages/interactives/news/rigged-shell-games-how-trucking-companies-that-cheat-drivers-dodge-penalties/>

³ <https://www.brookings.edu/blog/the-avenue/2020/03/17/the-places-a-covid-19-recession-will-likely-hit-hardest/>

SUPPORT

California Teamsters Public Affairs Council (*Co-sponsor*)
Port Division, International Brotherhood of Teamsters
(*Co-sponsor*)
Los Angeles Alliance for a New Economy (*Co-sponsor*)

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