

!!! CALL TO ACTION !!!

Protect the Owner-Operator Truck Driver Business Model *Support Efforts to Rescind “The Employee or Independent Contractor Classification Under the Fair Labor Standards Act”*

On January 10th, 2024, the U.S. Department of Labor, under the direction of unconfirmed Acting Secretary Julie Su, published a new set of rules that will be used to evaluate whether or not a worker is an Employee or an Independent Contractor under the Fair Labor Standards Act. The new rule will replace the 2021 Independent Contractor rule, a modern standard that focused on two core factors and offered a clearer path for Independent Contractors to exist. In contrast, the new rule stipulates that each of the six factors hold equal weight, with determinations made based on the “totality of the circumstances.” The new rule also allows the DOL to consider an unspecified number of *additional* factors, causing widespread uncertainty for the future of millions of independent contractors in thousands of professions nationwide, including Owner Operator truckers, who comprise a majority share of the driver workforce at the Port of NY & NJ. The new rule goes into effect March 11th.

The confusion and lack of clarity over how the factors will be applied will make it more risky—and far less desirable—for companies to have a business relationship with independent contractors. This is exactly what happened in California, under the direction of the state’s then-Labor Secretary Julie Su, when Assembly Bill 5 became law and enacted similarly restrictive classification criteria. AB5 has had disastrous consequences, sharply reducing the ability to work as an independent contractor: recently released data revealed that industries affected by AB5 posted a 10.5% decrease in self-employment, and a 4.4% decrease in overall employment.

If the new FLSA rule is enacted, it will hinder the ability to work with Independent Contractors nationwide, just as AB5 did in California. Reducing the ability for truck drivers to choose self-employment as an owner-operator will sharply reduce trucking capacity nationwide, negatively impacting the U.S. supply chain.

WHAT CAN WE DO TO STOP THIS?

There is an effort underway to pass legislation under the Congressional Review Act (CRA) that would rescind the new FLSA rule, and keep the 2021 rule—which has proven to be very effective in protecting workers from misclassification—in place. Representative Kevin Kiley (CA) is leading the CRA effort in the House, and Senator Bill Cassidy (LA) is filing legislation for a CRA in the Senate.

Contact NJ Congressional representatives and urge them to **support the CRA bills** put forth by Senator Bill Cassidy and Representative Kevin Kiley to stop the new FLSA rule. Also request that they withhold their support for Julie Su’s nomination for USDOL Secretary, and call for her immediate removal as Acting Secretary—a position that she has held without Congressional approval longer than any other person in history.

Rep. Donald Norcross, 202-225-6501	Rep. Bill Pascrell Jr., 202-225-5751
Rep. Jeff Van Drew, 202-225-6572	Rep. Donald Payne, 202-225-3436
Rep. Andy Kim, 202-225-4765	Rep. Mikie Sherrill, 202-225-5034
Rep. Rob Menendez Jr., 202-225-7919	Rep. Bonnie Watson Coleman, 202-225-5801
Rep. Josh Gottheimer, 202-225-4465	Rep. Chris Smith, 202-225-3765
Rep. Frank Pallone, Jr., 202-225-4671	Senator Cory Booker, 202-224-3224
	Senator Bob Menendez, 202-224-4744

Once you’ve called the members listed above, please call **Rep. Tom Kean, Jr. 202-225-5361** and thank him for being the first NJ Congressman to pledge his support for the Congressional Review Act bill to rescind the rule.

PLEASE CALL THESE CONGRESSMEMBERS TODAY, AND ASK YOUR CO-WORKERS, FRIENDS AND FAMILY TO DO THE SAME. WE MUST TAKE ACTION AND FIGHT TO PROTECT INDEPENDENT CONTRACTORS AND THE COMPANIES THAT DO BUSINESS WITH THEM.