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Withdrawal of Department of Labor Opinion Letters on Implementation of Safety Measures and Reclassification

On January 26, 2021, the U.S. Department of Labor (DOL) withdrew a previously issued opinion letter, FLSA2021-9, regarding a motor carrier's actions concerning safety programs and whether expanding them to owner-operators would jeopardize their classification as independent contractors. The original conclusion was that it did not constitute control for status purposes and that the owner-operator likely remained an independent contractor. With the withdrawal, it is uncertain as to the ultimate determination on these issues.

Motor carriers are responsible for the operational safety of their fleets. To comply with regulations and achieve safe operations, motor carriers have taken certain actions to ensure fleet safety by both employee drivers and owner-operators. Some of the measures implemented have been camera and sensor-based systems that monitor the driver, vehicle components and external conditions, speed limiters, and safety training courses. The DOL addressed whether requiring owner-operators to comply with these motor carrier-initiated actions changed them from independent contractors to employees. The original opinion viewed these safety measures differently than the "core factors" in determining classification status of the driver. The trucking industry is unique in that Congress and federal regulators place the majority of responsibility of drivers' safety performance upon the motor carrier. As such, the imposition of a requirement to meet legal obligations, comply with safety standards or carry insurance may not be an external control by the motor carrier that would effectuate a need to reclassify the driver as an employee.

An unidentified motor carrier with a blended fleet of employee and independent owner-operator drivers presented the DOL with the second request for opinion. The motor carrier provided descriptions of the differences in the treatment of employee drivers and owner-operators, outlining the factors such as provision of equipment,

expense reimbursement, insurance responsibility, scheduling, vacation, ability to select loads, existence of contract, requirement of attendance for meetings, and regulation of safety compliance to the DOL. The motor carrier sought guidance on classification of the drivers.

In its review of the specific scenario presented, the DOL originally determined that the owner-operator's ability to control their schedule and their ability to provide service for this carrier or any other carrier weighed in favor of independent contractor status. Additionally, the owner-operator's skill and ability to manage decisions on operations and expenditures separately from the carrier to determine profit or loss were evidence of its economic independence, which further supported the original opinion that these owner-operators were likely independent contractors.

It is important to remember that each state has different criteria for determining employee or independent contractor status. However, many look to the DOL standards for guidance. This opinion letter helped carriers set up their operation to be looked at favorably when faced with a question of status determination of an owner-operator. There is a better likelihood of independent contractor status when the motor carrier has less control, and the owner-operator has greater ability for self-determination of operations, schedule, and financial outcome. With this withdrawal by the DOL, the issue has become less clear for motor carriers.

For more information, please contact [Michael Case](#), [Eric Baker](#), [Stacey Katz](#), [Jeff Hunt](#), or any attorney in Frost Brown Todd's [Mobility & Transportation](#) industry team.

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