

# Special Alert

## Owner Operator Reclassification Affirmed in Arkansas

### Over the last 6 months, I have indicated that;

- Companies that employ independent contractors are a target for state and federal agencies.
- I discussed the recent announcement by IRS that they were targeting 6,000 companies who employed independent contractors.
- I cited various statutes and States that had established specific task force to address these issues, and;
- I voiced my continual concern that companies that employ independent contractors should distance themselves, as much as possible, from this exposure.

### I further indicated that;

- You don't have to change your business model, but;
- You need to distance yourself, otherwise you are going to be a target whether you win or lose.
- Transport Topics published that FedEx was fined \$14MM.
- The article further indicated that the State Attorney General was filing additional claims against FedEx and now the Arkansas Court of Appeals has issued a catastrophic ruling.

The Arkansas Court of Appeals affirmed an Arkansas Workers Compensation ruling that Owner/Op drivers had been misclassified as independent contractors. Although several facts supported their independent contractor status (including the contractors having obtained certificates of non-coverage from the commission) the court found that it could not "say that there was a lack of substantial evidence supporting the commission's conclusion"

- The court found particularly relevant restrictions in a lease/purchase agreement to which the owner/op leased the vehicles from an entity related to the motor carrier.
- The court noted that these leasing agreements required, among other things, that the contractor operate the truck under the related entities direction and under the motor carriers operating authority.
- That driver may not assign the agreement or sublease the truck, and that the driver had to have the truck serviced by a mechanic incurred by the leasing company.

Please refer to Steinert versus Arkansas Workers Compensation Commission, 2009 Ark.app.719 (November 4, 2009).

I have stated from the beginning that there are going to be more and more examples of state and federal agencies attempting to reclassify companies that employ independent contractors for tax revenue purposes.

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**It wasn't too long ago that the state of North Carolina had a similar ruling.** I would encourage any company that utilizes independent contractors to take a proactive approach to this matter;

- **Recognize you have an exposure, if you utilize independent contractors.**
- **Look for ways** to distance your company from the exposure.
- **Recognize** you may not like the process, but there are ways to further distance yourself from the inevitable, and;
- **For some companies, that have a false sense of security, this ruling should open up your eyes.**

**If any of my readers have additional questions, please don't hesitate to contact me.** if you want a copy of the ruling, please contact me.

**QUOTE OF THE WEEK: "There is only one thing about which I am certain, and that is there is very little about which one can be certain".**