

# DANNEMILLER BULLETIN

(November 12, 2012)

## **Look for continued crackdown on Owner-Operator status, experts say:**

Trucking companies should be cautious and ensure they are following the letter of the law as it pertains to independent contract drivers. Richard Plewacki, an expert attorney in these matters, at a recent American Trucking Associations' Management Conference & Exhibition on October 7, 2012, said that "what the O'bama Administration had not been able to accomplish legislatively it has been doing administratively, and the states are copy-cattng on that with particular interest in assessing unemployment taxes. The current administration has pushed Congress to classify more independent contractors as employees. A bill sponsored by Sen. Dick Durbin (D-Ill) would repeal a provision that allows companies to classify workers as independent contractors if similar workers are classified as employees. The legislation never passed but the O'bama administration ramped up efforts to investigate and audit misclassification allegations".

Scott Grandy's, chief strategy officer of Contractor Management Services says that "It all comes down to documentation,..when the situation comes up the burden of proof is on you (the employer) to show that the contractor is not an employee".

"Specifically", he said, "companies should be able to document details about how they established relationships with contractors and how those contracts ended. Contracts should clearly spell out terms and show that employers do not have a great deal of control over contractors, as auditors look for signs that a contractor should have been classified as an employee".

He also said that "employers should be careful when training drivers and monitoring their compliance with the regulations, as that process has been used to establish control in some cases".

He said "They're going to interpret the training and compliance with those regulations as control. So now it's up to you as a company to show them that your just complying with the Federal law and somebody else's regulations".

Since O'bama has been re-elected it is a good bet this initiative will continue and possibly accelerate. If you are not sure of your current contract or procedures, I suggest you contact your attorney.

Larry Dannemiller

11/13/2012