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Classifying Workers As Independent Contractors May Soon Become More Complicated

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Many companies use independent contractors as part of their workforce model. Anyone who has dealt with this issue knows, though, that setting up a worker as a contractor is a legally nuanced endeavor. It looks like a recent development at the National Labor Relations Board (NLRB) may make this an even more complicated endeavor for employers.

According to a [Bloomberg Law report](#): “The federal labor board has agreed to review a decision granting West Coast port truckers the right to form a union, signaling the board will take up the thorny issue of who’s an independent contractor and who’s an employee.” The article notes that the vote count set for July 15 “will be postponed and the ballots impounded until the board reaches a decision, NLRB spokeswoman Kayla Blado said.”

The article also said “Regional Director William Cowen said in his June 13 decision that the drivers did count as workers.”

Unlike employees, independent contractors are not covered by the National Labor Relations Act (NLRA), which means they cannot form unions or seek redress for alleged violations of the NLRA. The distinction between employees and independent contractors has been an area of great concern for gig economy workers, particularly [ride-share workers](#) and truckers.

The prior administration’s NLRB issued a standard that made it easier for workers to be classified as contractors under the NLRA, but earlier this year

the board under President Biden expressed a desire to revisit the prior administration's standard and [restrict](#) companies' ability in this context. The NLRB's recent actions suggest the anticipated change in the standard is forthcoming.

Employers of independent contractors should watch this development closely, as the NLRB's potential modification of the current framework determining the distinction between employees and independent contractors may require employees labeled as independent contractors to be reclassified.

Misclassification of workers can result in significant legal liability on an employer under the NLRA as well as other labor laws. Stay tuned.

This blog post was co-authored by summer associate Emily Lodge.