

### OWNER-OPERATOR CLASSIFICATION ALERT – APRIL/MAY 2015

This *Owner-Operator Classification Alert* is a monthly report on pending state and federal legislative and administrative initiatives that impact owner-operator classification. The *Alert* is designed to give interested parties notice of pending activity to allow them to take individual action or to make their views known to ATA and/or the appropriate state trucking association. Provisions related to application of state workers' compensation and unemployment tax measures to owner-operators, fleet owners, and related individuals will be the most commonly reported items. The *Alert* is being produced in cooperation with the Indianapolis-based law firm, Scopelitis, Garvin, Light, Hanson & Feary.

As reflected below for each initiative, the *Alert* will identify the applicable jurisdiction; the bill number or proposed rule cite; a brief description of what the initiative is designed to accomplish; and a status report. Noted dates of adjournment and Governor's deadlines are prospective only. ATA will be working with the affected state trucking association to assist them in developing and advocating the trucking industry's common position on the proposed provision.

#### PENDING INITIATIVES

JURISDICTION	BILL #	STATUS	BRIEF DESCRIPTION	INDUSTRY IMPACT
<b>APRIL/MAY 2015 SUMMARY UPDATES (CURRENT AS OF INFORMATION AVAILABLE MAY 15, 2015)</b>				
<b>Arkansas</b>	<b>H 1540</b>	<b>Enacted 4/2/2015</b>	<b>Changes ABC Test used in Independent Contractor Act found in Arkansas unemployment code from a conjunctive test to a disjunctive test by use of the word "or" instead of "and" for purposes of (B) and (C) prongs.</b>  <b>NOTES OF INTEREST: To House Public Health, Welfare, and Labor Committee; To Senate Public Health, Welfare, and Labor Committee</b>	<b>Moderately favorable impact. Creates greater potential that an owner-operator may establish that it is an independently established business under the C prong of the test. However, even modified, the ABC Test is often not correctly applied in the context of owner-operator relationships.</b>
<b>California</b>	<b>A 621</b>	<b>New Committee 4/8/2015</b>	<b>Creates mechanism to enter into consent decree with Labor Commissioner to avoid penalties and interest related to misclassification. Requires conversion to employee model.</b>  <b>NOTES OF INTEREST: To Assembly Labor and Employment Committee, To Assembly Appropriations Committee</b>	<b>Although proposal of consent decree creates facially favorable circumstances regarding penalties and interest, impact of legislation is unfavorable due to its limited reach and impact.</b>

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JURISDICTION	BILL #	STATUS	BRIEF DESCRIPTION	INDUSTRY IMPACT
Hawaii	S 1219	To Concurrence 4/9/2015	Replaces the unfavorable ABC Test used for unemployment compensation. Permits the department of labor to establish a new test. Creates an independent contractor certification system where the IC has (1) valid FEIN; (2) registered with the Department of Commerce and consumer affairs to do business; (3) a current general excise tax license; and (4) entered into a written agreement with a customer (presumably the motor carrier, for our purposes) to perform services for which the individual has registered to do business. An IC must provide the certificate of IC status to each customer (here, the motor carrier). A certified IC who files a claim for unemployment benefits has the burden to establish employment status. As amended, creates direct reference to IRS 20 factor test, but removes certification process.  NOTES OF INTEREST: To Senate Judiciary and Labor Committee	Favorable impact. While it can be difficult to anticipate a potential administrative definition, creation of IC certification process and placement of burden of employment status on individual filing a claim for benefits reduces negative impact of administrative authority. As amended, language remains preferable to ABC Test but less advantageous than proposed certification process.
Indiana	H 1019	Enacted 5/6/2015	Repeal of common construction wage statute. Permits a state agency to request an investigation of suspected misclassification in public works construction contracts.	Primarily derivative impact. Indicates willingness to investigate suspected misclassification in public works construction projects.
Iowa	S 499	To Conference 5/6/2015	Requests appropriations to bolster investigation of misclassification.  NOTES OF INTEREST: To Senate Appropriations Committee	Funding indicates continued commitment to misclassification.
Massachusetts	S 1018	To Joint Committee 4/15/2015	Authorizes stop work orders, debarment, and revocation of state-issued licenses where an employer fails to pay over employment taxes or unemployment compensation tax payments.  NOTES OF INTEREST: To Joint Committee on Labor and Workforce Development	Adverse impact. Creates potential for per se violation of law (and exposure to stop work order) upon a finding of failure to pay taxes as a result of good-faith misclassification.
Minnesota	H 2250	To Committee 4/21/2015	Adds factors prohibiting exclusive use and mandating opportunity to provide service to others to existing owner-operator exemption.  NOTES OF INTEREST: To House Commerce and Regulatory Reform Committee	Adverse impact. Creates potential to misapply contract terms required by federal leasing regulations in interpretation of exemption. Oppose legislation.

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Missouri	H 461	Passed Committee (Substituted) 4/2/2015	<p>“Employee Reclassification Act.” Directs the Department of Labor and Industrial Relations to create a clear and concise definition of independent contractor and procedures by which the Department may reclassify an independent contractor as an employee. Creates Section 530-type safe harbor, authorizes opinion letters as to status. Creates a rebuttable presumption of IC status for LLCs, corporations, or duly authorized assumed name entities, as well as individuals licensed by the state or local authority who provide services to multiple customers and whose services are not the same as those provided by the “customer”/general contractor. AS AMENDED: Creates Section 530-like safe harbor for purposes of unemployment compensation.</p> <p>NOTES OF INTEREST: To House Employment Security Committee</p>	Favorable impact as amended.
Montana	D 982/HJR 31	Assigned HJR 4/15/2015	Creates a legislative study committee to investigate fraud in workers’ compensation, including fraudulent claims and misclassification.	Creation of a task force or study committee creates the potential for adverse legislation relating to the definition of employee or independent contractor. Monitoring of report activities and recommendations is advised.
Nevada	S 224	To Assembly 4/17/2015	<p>Changes definition of independent contractor for purposes of wage payment statute. As currently drafted, contains 5 factor test to establish IC status where 3 factors must be met (1) free from control or direction (notwithstanding regulatory or contractual control); (2) control over work hours (agreement as to range of hours is acceptable); (3) not required to work exclusively for principal unless mandated by law or contract; (4) free to hire employees; (5) substantial investment of capital.</p> <p>NOTES OF INTEREST: To Senate Commerce, Labor and Energy Committee</p>	Indeterminate impact. While text as officially set forth creates unique factors to meet in order to establish IC status, anticipated amendments will clarify IC status in Nevada for wage payment purposes.

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JURISDICTION	BILL #	STATUS	BRIEF DESCRIPTION	INDUSTRY IMPACT
North Carolina	H 482	To Committee 4/2/2015	<p>Seeks to establish an Employee Misclassification Task Force to “assist” existing departments in recouping taxes and penalties purportedly related to misclassification resulting as a violation of the laws of those agencies (workers’ compensation, unemployment compensation, and state income tax). Although the Act appears to retain the existing definitions of “employment” for purposes of workers’ compensation, unemployment compensation, and state income tax, the later inclusion of a definition of “independent contractor” based on the <i>Hayes</i> case creates an effective new test of IC status of purposes of misclassification. Prohibits “employee misclassification.” Creates penalties of \$1,000/employee for future instances of misclassification after an employer is found to have engaged in employee misclassification “after being assessed any back taxes, wages, benefits, penalties, or other monies by any State agency.” Does not create a private right of action. Provides for penalty-only Amnesty program for employers willing to admit misclassification. Finally, the Act removes workers’ compensation exemptions for taxi drivers and newspaper carriers.</p> <p>NOTES OF INTEREST: To House Commerce and Job Development Committee</p>	Negative Impact. Pursuant to this legislation, an employer can be fully compliant with the laws of the underlying agencies and still be found to have misclassified employees because of this inconsistent test. The included amnesty program is likely to suffer many of the complications of other attempts to offer “amnesty” for purportedly misclassified workers. While it will provide relief from the misclassification-related penalties, it requires an employer to acknowledge misclassification of workers and exposes the employer to taxes and penalties for purposes of workers’ compensation, unemployment compensation, and state income tax (as these are not included in the amnesty relief). Care should be taken to monitor the legislation to ensure it does not attempt to counter efforts to fix the owner-operator exemption in 97-19.1.
North Carolina	H 674	To Committee 4/14/2015	<p>“Fair Competition and Employee Classification Act.” Creates a new definition of independent contractor using the ABC Test to create a stand-alone “misclassification” violation that is to codified in the Labor code but to be enforced by the Department of Labor, the Industrial Commission, the state Revenue Department, and the Department of Commerce. Prohibits aiding and abetting misclassification, retaliation. Authorizes administrative hearings regarding alleged misclassification, civil penalties for misclassification (\$500-\$4,000/violation), stop work orders, debarment, inter-agency communication regarding misclassification.</p> <p>NOTES OF INTEREST: To House Judiciary Committee</p>	Negative impact. The actual scope of the bill is difficult to determine due to the prohibition on “misclassification” without reference to a specific state law. By inference, the new ABC Test could apply to state labor, unemployment, workers’ compensation, tax, and wage payment laws. Oppose legislation.

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JURISDICTION	BILL #	STATUS	BRIEF DESCRIPTION	INDUSTRY IMPACT
North Carolina	S 694	Engrossed 4/29/2015	<p>Seeks to establish an Employee Misclassification Division to “assist” existing departments in recouping taxes and penalties purportedly related to misclassification resulting as a violation of the laws of those agencies (workers’ compensation, unemployment compensation, and state income tax). Although the Act appears to retain the existing definitions of “employment” for purposes of workers’ compensation, unemployment compensation, and state income tax, the later inclusion of a definition of “independent contractor” based on the <i>Hayes</i> case creates an effective new test of IC status of purposes of misclassification. Prohibits “employee misclassification.” Creates penalties of \$1,000/employee for future instances of misclassification after an employer is found to have engaged in employee misclassification “after being assessed any back taxes, wages, benefits, penalties, or other monies by any State agency.” Does not create a private right of action. Provides for penalty-only Amnesty program for employers willing to admit misclassification. Finally, the Act removes workers’ compensation exemptions for taxi drivers and newspaper carriers.</p> <p>NOTES OF INTEREST: To Senate Rules and Operations of the Senate Committee</p>	Negative Impact. Pursuant to this legislation, an employer can be fully compliant with the laws of the underlying agencies and still be found to have misclassified employees because of this inconsistent test. The included amnesty program is likely to suffer many of the complications of other attempts to offer “amnesty” for purportedly misclassified workers. While it will provide relief from the misclassification-related penalties, it requires an employer to acknowledge misclassification of workers and exposes the employer to taxes and penalties for purposes of workers’ compensation, unemployment compensation, and state income tax (as these are not included in the amnesty relief). Care should be taken to monitor the legislation to ensure it does not attempt to counter efforts to fix the owner-operator exemption in 97-19.1.
Oregon	H 3061	To Committee 4/20/2015	<p>Creates task force on “Family-Friendly Public Contracting.” Requires task force to consider ways to award public contracts to bidders with “family-friendly” policies, including on those who prevent misclassification of employees as ICs.</p> <p>NOTES OF INTEREST: To House Consumer Protection and Government Effectiveness Committee</p>	Creation of a task force or study committee creates the potential for adverse legislation relating to the definition of employee or independent contractor in Oregon (although risk of directly adverse legislation is limited in this instance due to the focus of the committee). Monitoring of task force activities and recommendations is advised.

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JURISDICTION	BILL #	STATUS	BRIEF DESCRIPTION	INDUSTRY IMPACT
Oregon	S 718	To Committee 4/27/2015	Creates new definition of “employment” for purposes of wage payment, minimum wage, and labor contractor codes using “integral part of the business of employer” as the touchstone for employment. Does not include owner-operator exemption as contained in either workers’ compensation or unemployment compensation code. Creates new documentation required to support pay documents and creates potential for per se violation upon finding of misclassification.  NOTES OF INTEREST: To Senate Workforce Committee; To Senate Rules Committee	Adverse impact. Creates potential for per se violation upon finding of misclassification of wage payment code where existing workers’ compensation and unemployment compensation exemption is not continued through law.
South Carolina	S 674	To Committee 4/16/2015	Recodifies workers’ compensation act. Creates owner-operator exemption for an owner operator and the owner operator's employees where the owner operator has entered into a written agreement with the motor carrier that evidences a relationship in which the owner operator assumes the responsibilities of an employer for the performance of work.  NOTES OF INTEREST: To Senate Judiciary Committee	Neutral impact. Terms of exemption are favorable, however, existing favorable exemption may be less subject to negotiation through the legislative process than an active piece of legislation.
Tennessee	H 558	Becomes S 171 4/9/2015	Prohibits workers’ compensation insurance companies from charging premium for independent contractors as determined by general independent contractor test.  NOTES OF INTEREST: To House Consumer and Human Resources Committee	Neutral impact. Because prohibition is tied to general definition, rather than exemption, recommend amending to include OO exemption in prohibition.
Tennessee	H 1374	To Governor 5/8/2015	Requests appropriations to bolster investigation of misclassification.  NOTES OF INTEREST: To House Finance, Ways and Means Committee	Funding indicates continued commitment to misclassification.
Tennessee	S 171	Enacted 4/22/2015	Prohibits workers’ compensation insurance companies from charging premium for independent contractors as determined by general independent contractor test.  NOTES OF INTEREST: To Senate Commerce and Labor Committee	Neutral impact. Because prohibition is tied to general definition, rather than exemption, recommend amending to include OO exemption in prohibition.

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JURISDICTION	BILL #	STATUS	BRIEF DESCRIPTION	INDUSTRY IMPACT
Tennessee	S 1399	Becomes H 1374 4/16/2015	Requests appropriations to bolster investigation of misclassification.  NOTES OF INTEREST: To Senate Finance, Ways and Means Committee	Funding indicates continued commitment to misclassification.
Vermont	H 378	To Committee 4/29/2015	Creates a uniform definition of independent contractor for purposes of unemployment compensation and workers' compensation. Creates IC status where: (1) have control; (2) customarily engaged in an independently established trade, occupation, or business; (3) substantive investment in facilities, tools, instruments, materials, and knowledge; (4) opportunity for profit and loss; (5) hires and pays employees; (6) can make services available to general public. Also must meet 2 of the following: (1) contractually responsible for failure to complete work; (2) written contract; (3) payment based on work performed and not time expended; (4) work is outside the usual course of business for which work performed; (5) files taxes as an IC.  NOTES OF INTEREST: To House General, Housing, and Military Affairs Committee	Mixed impact. While the terms as drafted are more favorable than the existing tests, inclusion of ABC elements increases the potential that such elements will be applied in a restrictive manner. Would suggest changing or eliminating reference to those elements also included in the ABC Test, or clarifying "independently established trade, occupation, or business."
Washington	H 1519	Reintroduced 4/29/2015	Creates Employee Classification Act for purpose of prevailing wage, wage deductions, wage payment, minimum wage, unemployment compensation, and workers' compensation. Creates alternative ABC/separate business entity IC test. Explicitly states that more than one entity may be deemed an employer under the law, and that each employer will be jointly and severally liable for violations.  NOTES OF INTEREST: To House Labor Committee; To House Appropriations Committee	Adverse impact. While alternative IC test may be satisfied in traditional owner-operator models, creation of potential joint employer liability creates significant exposure to liability for misclassification.

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JURISDICTION	BILL #	STATUS	BRIEF DESCRIPTION	INDUSTRY IMPACT
Washington	S 5566	Reintroduced 4/29/2015	Creates Employee Classification Act for purpose of prevailing wage, wage deductions, wage payment, minimum wage, unemployment compensation, and workers' compensation. Creates alternative ABC/separate business entity IC test. Explicitly states that more than one entity may be deemed an employer under the law, and that each employer will be jointly and severally liable for violations.  NOTES OF INTEREST: To Senate Commerce and Labor Committee	Adverse impact. While alternative IC test may be satisfied in traditional owner-operator models, creation of potential joint employer liability creates significant exposure to liability for misclassification.
PRIOR UPDATES				
Georgia	H 500	Passed Committee 3/9/2015	Changes definition of employment from control test to unfavorable factor test. Requires putative employer to submit "timely evidence" supporting factors – unclear if independent contractor status may be established absent such submission (e.g., whether it must create a certification process). Mandates website to permit submission of reports of misclassification.  NOTES OF INTEREST: To House Industry and Labor Committee	Marginal impact due to existing favorable owner-operator exemption. Unfavorable terms negatively impact the generally-applicable test within Georgia. Continue to monitor for additional adverse changes.
Georgia	SR 11	Passed Committee 2/12/2015	Creates senate study committee on employee misclassification to consider: impact of misclassification, estimates of frequency (in specific industries) of misclassification, whether state law should create a uniform definition of employment, effectiveness of existing laws, information sharing amongst agencies, public interest campaigns, and other changes to state law to reduce misclassification.  NOTES OF INTEREST: To Senate Insurance and Labor Committee	Creation of a task force or study committee creates the potential for adverse legislation relating to the definition of employee or independent contractor in Georgia. Monitoring of committee activities and recommendations is advised.



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JURISDICTION	BILL #	STATUS	BRIEF DESCRIPTION	INDUSTRY IMPACT
Hawaii	H 1213	Failed First Crossover Deadline 3/12/2015	<p>Replaces the unfavorable ABC Test used for unemployment compensation. Permits the department of labor to establish a new test. Creates an independent contractor certification system where the IC has (1) valid FEIN; (2) registered with the Department of Commerce and consumer affairs to do business; (3) a current general excise tax license; and (4) entered into a written agreement with a customer (presumably the motor carrier, for our purposes) to perform services for which the individual has registered to do business. An IC must provide the certificate of IC status to each customer (here, the motor carrier). A certified IC who files a claim for unemployment benefits has the burden to establish employment status.</p> <p>NOTES OF INTEREST: To House Labor and Public Employment Committee</p>	Favorable impact. While it can be difficult to anticipate a potential administrative definition, creation of IC certification process and placement of burden of employment status on individual filing a claim for benefits reduces negative impact of administrative authority.
Idaho	H 143	Enacted 3/30/2015	<p>Creates owner-operator exemption for owner-operators and their employees for purposes of unemployment compensation where own equipment or hold under bona fide lease and where leased to a motor carrier pursuant to federal leasing regulations.</p> <p>NOTES OF INTEREST: To House Transportation and Defense Committee; To Senate Commerce and Human Resources Committee</p>	Favorable impact. Clarifies status of owner-operators and their employees in relation to motor carriers for purposes of unemployment compensation.
Iowa	H 72	To Committee 1/22/2015	<p>Makes subsequent misclassification of employees for purposes of unemployment compensation subject to 100% additional contribution/penalty.</p> <p>NOTES OF INTEREST: To House Labor Committee</p>	Adverse impact. Creates potential for significant potential liability for subsequent findings of misclassification for purposes of unemployment compensation. Clarification as to “subsequent finding” to ensure applies only after judicial or formal administrative proceeding.

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JURISDICTION	BILL #	STATUS	BRIEF DESCRIPTION	INDUSTRY IMPACT
Iowa	H 73	To Committee 1/22/2015	Amends wage payment and collection law to require payment rights notices to be provided to all employees (rather than after a finding of a violation). Outlines special notice requirements for payments made on a “piece, mile, or load basis.” Removes “intentional” basis for liquidated damages for violations, creates civil cause of action for claims of retaliation.  NOTES OF INTEREST: To House Labor Committee	Adverse impact. Creates perception of violations within Iowa by specifically referencing “piece, mile, or load basis.” Negatively changes existing law that protects against unintentional or technical violations to create liability for violations of notice provisions and liability for increased damages for an unintentional violation.
Iowa	SSB 1261	To Committee 3/4/2015	Requests appropriations to bolster investigation of misclassification.  NOTES OF INTEREST: To Senate Appropriations Committee	Funding indicates continued commitment to misclassification.
Kentucky	H 256	Failed - Adjourned 3/25/2015	As substituted, creates Construction Industry Employee Misclassification Act. Construction industry definition is silent as to transportation but includes excavation. Creates new factor test to determine independent contractor status and a process to file and investigate complaints of misclassification. Creates a private right of action; provides for penalties, damages, and debarment; and mandates a Know Your Rights notice.	Derivative impact. While the legislation is limited to the construction industry, continues adverse perception of the “problem” of misclassification and creates a framework from which a broader misclassification act could be built. Monitor for adverse changes.
Mississippi	H 495	Died 2/3/2015	Requires owner-operator to originate proof of occupational accident coverage to establish workers’ compensation exemption. Outlines technical coverage requirements for policy.  NOTES OF INTEREST: To House Insurance Committee	Adverse impact. Would create unworkable coverage requirements.
Mississippi	H 704	Died 2/3/2015	Establishes penalty of 10% of bid cost for public works contractors misclassifying employees. Authorizes information sharing amongst agencies.  NOTES OF INTEREST: To House Judiciary Committee	Adverse impact. Creates potential for misapplication of one agency’s test in an unrelated area following allegations of misclassification.

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JURISDICTION	BILL #	STATUS	BRIEF DESCRIPTION	INDUSTRY IMPACT
Mississippi	S 2629	Died 2/3/2015	Requires owner-operator to originate proof of occupational accident coverage to establish workers' compensation exemption. Outlines technical coverage requirements for policy.  NOTES OF INTEREST: To Senate Insurance Committee	Adverse impact. Would create unworkable coverage requirements.
New Jersey	A 2860	To Committee 3/10/2014	Misclassification Act applicable to drayage and parcel delivery drivers. Applies to Prevailing Wage Act, unemployment compensation law, Temporary Disability Benefits Law, Income Tax, and Wage and Hour laws. Defines "drayage truck operator" to be "the driver of, or any person, party, or entity that controls the operation" of a vehicle with a GVWR of greater than 33,000 lbs. loading or transporting cargo in a port or intermodal rail yard. Defines "parcel delivery truck operator" as "the driver of, or any person or entity, that controls the operation of a vehicle used in the business of small package delivery." Uses ABC Test to determine whether drayage truck operators or parcel delivery truck operators are independent contractors for purposes of the Act, and expressly excludes such drivers from the current owner-operator exemption contained in unemployment compensation act. Makes "an employer, or any officer, agent, superintendent, foreman, or employee of the employer who fails to properly classify an individual ... and fails to pay wages, benefits, taxes, or other contributions required" by the relevant laws guilty of a criminal offense (subject to fine and/or imprisonment), administrative penalties, a private right of action (representative and class actions are authorized with attorneys fees and costs available). In the case of a knowing violation, criminal penalties and fees are heightened with additional authorization for fines and restitution.  NOTES OF INTEREST: To Assembly Labor Committee	Negative impact. As currently drafted, effectively creates presumption that drayage and parcel delivery drivers should be considered employees. Further favorable refinement is anticipated.

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New Jersey	S 992	To Committee 1/27/2014	<p>Misclassification Act applicable to drayage and parcel delivery drivers. Applies to Prevailing Wage Act, unemployment compensation law, Temporary Disability Benefits Law, Income Tax, and Wage and Hour laws. Defines “drayage truck operator” to be “the driver of, or any person, party, or entity that controls the operation” of a vehicle with a GVWR of greater than 33,000 lbs. loading or transporting cargo in a port or intermodal rail yard. Defines “parcel delivery truck operator” as “the driver of, or any person or entity, that controls the operation of a vehicle used in the business of small package delivery.” Uses ABC Test to determine whether drayage truck operators or parcel delivery truck operators are independent contractors for purposes of the Act, and expressly excludes such drivers from the current owner-operator exemption contained in unemployment compensation act. Makes “an employer, or any officer, agent, superintendent, foreman, or employee of the employer who fails to properly classify an individual ... and fails to pay wages, benefits, taxes, or other contributions required” by the relevant laws guilty of a criminal offense (subject to fine and/or imprisonment), administrative penalties, a private right of action (representative and class actions are authorized with attorneys fees and costs available). In the case of a knowing violation, criminal penalties and fees are heightened with additional authorization for fines and restitution.</p> <p>NOTES OF INTEREST: To Senate Labor Committee</p>	Negative impact. As currently drafted, effectively creates presumption that drayage and parcel delivery drivers should be considered employees. Further favorable refinement is anticipated.
New York	A 472	To Committee 1/7/2015	<p>“Just and Open Business Subsidies (‘JOBS’) Act.” Requires state authorities issuing public works monies to report, among other things, recipients of funds that are found to have violated state or federal employment misclassification laws.</p> <p>NOTES OF INTEREST: To Assembly Corporations, Authorities, and Commissions Committee</p>	Marginally negative impact. No direct impact on classification determinations, but highlights continued focus on misclassification as a perceived prevalent employment practices abuse.

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New York	A 6695	To Committee 3/30/2015	Creates a private right of action for contractors who lose a bid for a construction project as a result of the winning bidder's misclassification.  NOTES OF INTEREST: To Assembly Labor Committee	Indirect negative impact. Although the legislation applies to construction contractors losing competitive bids, the focus on misclassification creates negative momentum regarding legislative perspectives.
New York	S 2838	To Committee 1/29/2015	"Just and Open Business Subsidies ('JOBS') Act." Requires state authorities issuing public works monies to report, among other things, recipients of funds that are found to have violated state or federal employment misclassification laws.  NOTES OF INTEREST: To Senate Corporations, Authorities, and Commissions Committee	Marginally negative impact. No direct impact on classification determinations, but highlights continued focus on misclassification as a perceived prevalent employment practices abuse.
New York	S 3582	To Committee 2/12/2015	"Lowest Responsible Bidder" act for public works contracts. Requires bidders for public works contracts to disclose findings of misclassification, bars award of contracts to such bidders.  NOTES OF INTEREST: To Senate Finance Committee	Marginally negative impact. No direct impact on classification determinations, but highlights continued focus on misclassification as a perceived prevalent employment practices abuse.
North Carolina	H 22	To Committee 2/2/2015	Requires Division of Labor to make quarterly report on unemployment compensation fraud, including employee misclassification.  NOTES OF INTEREST: To House Finance Committee	Marginally negative impact. No direct impact on classification determinations, but highlights continued focus on misclassification as a perceived prevalent employment practices abuse.
North Carolina	S 15	To Committee (second chamber) 2/24/2015	Requires Division of Labor to make quarterly report on unemployment compensation fraud, including employee misclassification.  NOTES OF INTEREST: To Senate Finance Committee; To House Rules, Calendar, and Operations of the House Committee	Marginally negative impact. No direct impact on classification determinations, but highlights continued focus on misclassification as a perceived prevalent employment practices abuse.

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JURISDICTION	BILL #	STATUS	BRIEF DESCRIPTION	INDUSTRY IMPACT
North Carolina	S 205	To Committee 3/16/2015	<p>Revises owner-operator exemption for purposes of workers' compensation to clarify application of exemption to owner-operators who are responsible for operating or hiring workers to operate the equipment and who is covered by an occupational accident policy.</p> <p>NOTES OF INTEREST: To Senate Judiciary II Committee</p>	Favorable impact. Clarifies application of owner-operator exemption to owner-operators without DOT motor carrier authority.
North Carolina	S 576	To Committee 3/30/2015	<p>Makes misclassification a per se violation of the NC labor code using the ABC test (it also prohibits assisting with or "coercing" a party to sign an agreement that results in misclassification). The statute effectively requires the use of the ABC test to determine misclassification despite the fact that the existing test of independent contractor status for purposes of wage and hour and wage payment claims is the economic realities test (the proposed legislation otherwise cites to the wage and hour law for the definition of employment). Requires heightened Know Your Rights notice. Prohibits retaliation and waivers of rights by agreement and authorizes stop work orders and debarment from public projects for violators. Provides for a civil penalty from \$500-\$4,000/violation (which is defined to be a separate violation per individual per day) to be paid into the state fund. Authorization of the labor department's "authorized representative" may open door to private attorney general actions. Authorizes information sharing between agencies regarding misclassification, although it does specifically require the relevant agency to use their own definitions of employment status to make a determination of misclassification.</p> <p>NOTES OF INTEREST: To Senate Rules and Operations of the Senate Committee</p>	Negative impact. The legislation attempts to change the definition of independent contractor through establishing a "misclassification act" that uses its own definition of independent contractor without reference to (or even directly changing) the existing definitional laws for those code sections it cites to (e.g., wage and hour, unemployment compensation, workers' compensation, and state income tax). Creates potential for adverse ABC test to be inappropriately applied in these contexts and requires heightened Know Your Rights notice, where parties must be instructed that they have a right to be classified as an employee where they meet the definition under the Act (e.g., the ABC test), despite the fact that North Carolina does not use the ABC test as the primary test for independent contractor status in any of the code sections that are cited (e.g., wage and hour, workers' compensation, unemployment compensation).

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JURISDICTION	BILL #	STATUS	BRIEF DESCRIPTION	INDUSTRY IMPACT
Ohio	S 25	To Committee 2/4/2015	Increases Ohio minimum wage, creates a uniform test for independent contractor status for purposes of wage payment, minimum wage, unemployment compensation, workers' compensation, and income tax. Changes unemployment compensation definition of "employee" to apply to "delivery drivers" delivering "parcels" and "freight." Prohibits misclassification, but limits primary misclassification act elements to construction industry only (which includes moving construction related goods). Uniform definition requires: (a) free from direction and control; (b) customarily engaged in an independently established trade, occupation, profession, or business; (c) separate and distinct business entity; (d) incurs the main expenses and has continuing or recurring business liabilities; (e) liable for breach of contract for failure to perform; (f) agreement as to services, payment, and time for performance; (g) service is outside the usual course of business of the employer.  NOTES OF INTEREST: To Senate Commerce, Transportation, and Labor Committee	Adverse impact. Changes to unemployment compensation definition and to test for independent contractor status will adversely affect the generally favorable state of Ohio law. Oppose legislation.
Oregon	H 2223	Introduced 2/2/2015	Creates task force on employee misclassification to consider: impact of misclassification and changes to state law to reduce misclassification.  NOTES OF INTEREST: To House Business and Labor Committee	Creation of a task force or study committee creates the potential for adverse legislation relating to the definition of employee or independent contractor in Oregon. Monitoring of task force activities and recommendations is advised.
South Dakota	H 1105	Enacted 3/10/2015	Creates mechanism to file an affidavit of exempt status for purposes of workers' compensation. Creates rebuttable presumption of IC status.  NOTES OF INTEREST: To House Commerce and Industry Committee	Potentially favorable impact. Interaction with current IC certification would serve to enhance IC status within South Dakota.
Texas	HR 436	Adopted 2/19/2015	Names February 25, 2015, "Day of the Fallen" in memory of construction workers who have died from work injuries. States 41% of the workforce is misclassified as independent contractors.	Marginally negative impact. No direct impact on classification determinations, but highlights continued focus on misclassification as a perceived prevalent employment practices abuse.

## OWNER-OPERATOR CLASSIFICATION ALERT – APRIL/MAY 2015

PENDING INITIATIVES				
JURISDICTION	BILL #	STATUS	BRIEF DESCRIPTION	INDUSTRY IMPACT
Texas	H 1714	To Committee 3/18/2015	Requires the comptroller of public accounts to create a report on employee misclassification to consider impact of misclassification and other changes to state law to reduce misclassification.  NOTES OF INTEREST: To House State Affairs Committee	Creation of a task force or study committee creates the potential for adverse legislation relating to the definition of employee or independent contractor. Monitoring of report activities and recommendations is advised.
Texas	H 3148	To Committee 3/23/2015	Construction contractor misclassification act – specifically includes moving and excavating real property. Requires registration of construction contractors, debars contractors found to have misclassified employees as independent contractors.  NOTES OF INTEREST: To House Business and Industry Committee	Indirect negative impact. Creates continued perception of widespread classification abuse, however, application to construction industry limits exposure.
Texas	S 927	To Committee 3/9/2015	Expands existing penalties for worker misclassification for purposes of unemployment compensation from those in government contracts to all workers.  NOTES OF INTEREST: To Senate Natural Resources and Economic Development Committee	Negative impact. Creates continued perception of widespread classification abuse. Existing delivery service exemption mitigates risk to some extent.
Utah	H 65	Enacted 3/25/2015	Permits Unemployment Insurance Division to report misclassification information to US Department of Labor, Wage and Hour Division.  NOTES OF INTEREST: To House Economic Development and Workforce Services Committee	Marginally negative impact. No direct impact on classification determinations, but highlights continued focus on misclassification as a perceived prevalent employment practices abuse.
Vermont	H 332	To Committee 2/26/2015	Authorizes the Department of Labor to enter an employer's premises to investigate claims of misclassification.  NOTES OF INTEREST: To House Commerce and Economic Development Committee	Such authority creates the potential for adverse investigative activities based on an allegation of misclassification. Advise to require a showing of some level of reasonable suspicion prior to such actions.



## OWNER-OPERATOR CLASSIFICATION ALERT – APRIL/MAY 2015

PENDING INITIATIVES				
JURISDICTION	BILL #	STATUS	BRIEF DESCRIPTION	INDUSTRY IMPACT
Vermont	H 335	To Committee 2/26/2015	<p>Authorizes “sole contractor” registration. Requires Know Your Rights notice setting forth differences between employees and ICs, authorizes labor department representatives to inspect workplaces to investigate employment classification claims. Authorizes a worker to obtain a sole contractor certificate where (1) worker certifies he was not coerced into IC status; (2) has an FEIN; (3) provides social security number or work visa; (4) has registered as a business entity; (5) certifies he has control and direction over work; (6) certifies he has no employees; (7) certifies no outstanding child support obligations or taxes. Department may request additional information. Prohibits hiring “multiple authorized sole contractors” to do the same work on a job site.</p> <p>NOTES OF INTEREST: To House Commerce and Economic Development Committee</p>	Negative impact. The primary and secondary criteria imposed by the legislation seek to create a significantly high bar to establish independent contractor status, including forcing a worker to form a business entity rather than working as a sole proprietor. Prohibition on hiring multiple authorized sole proprietors to perform the same work appears targeted to limit the number of independent businesses that may work at a single site. Does not have significant impact on overall negative atmosphere in Vermont.
Vermont	S 82	To Committee 2/12/2015	<p>Creates the Vermont Commission on Employee Misclassification, a standing commission within the Department of Labor to review and investigate claims of misclassification, recommend changes to Vermont law to reduce misclassification, develop and implement strategies to improve communication regarding misclassification, and to make annual reports regarding misclassification.</p> <p>NOTES OF INTEREST: To Senate Economic Development, Housing, and General Affairs Committee</p>	Negative impact. No direct impact on classification determinations, but highlights continued focus on misclassification as a perceived prevalent employment practices abuse and increases likelihood of adverse legislation and administrative enforcement.
Virginia	H 1806	Enacted 3/23/2015	<p>Creates owner-operator exemption for purposes of workers’ compensation. Applies to “an owner-operator of a motor vehicle that is leased with or to common or contract carrier in the trucking industry” where each of the following factors are present: (1) the OO is responsible for maintenance; (2) the OO bears the principal burden of the vehicle’s operating cost; (3) the OO is the driver; and (4) the OO determines the method and means of performing the service.</p> <p>NOTES OF INTEREST: To House Commerce and Labor Committee</p>	Favorable impact. Would create clear basis to establish an independent contractor relationship and to avoid highly fact-specific interpretation of relationship under current law (although recent case law has found OOs to be ICs).

## OWNER-OPERATOR CLASSIFICATION ALERT – APRIL/MAY 2015

PENDING INITIATIVES				
JURISDICTION	BILL #	STATUS	BRIEF DESCRIPTION	INDUSTRY IMPACT
Virginia	S 745	Enacted 2/26/2015	Creates owner-operator exemption for purposes of workers' compensation. Applies to "an owner-operator of a motor vehicle that is leased with or to common or contract carrier in the trucking industry" where each of the following factors are present: (1) the OO is responsible for maintenance; (2) the OO bears the principal burden of the vehicle's operating cost; (3) the OO is the driver; and (4) the OO determines the method and means of performing the service.  NOTES OF INTEREST: To Senate Commerce and Labor Committee	Favorable impact. Would create clear basis to establish an independent contractor relationship and to avoid highly fact-specific interpretation of relationship under current law (although recent case law has found OOs to be ICs).
Wyoming	H 59	Died 3/4/2015	Refines definition of independent contractor for purposes of unemployment, workers' compensation, and to include control over the means and manner of performing the services; contains exemplar definitions of "means and manner" to be used in interpreting the statute. The enumerated examples of means and manner essentially restrict a motor carrier from providing direction regarding work schedules, work processes, and work procedures ("manner") and from providing direction regarding the tools, equipment, labor, devices, plans, materials, licenses, property, work location, and assets used in completing the services under the contract.  NOTES OF INTEREST: To House Labor, Health, and Social Services Committee	Adverse impact. Although Wyoming has existing OO exemptions for purposes of unemployment compensation and workers' compensation, provisions of the general IC test may be applied in the case of fleet drivers. Application of the proposed refined test to fleet drivers could produce unintended inclusion of such drivers as the employees of a motor carrier where standardized billing or tracking procedures are implemented.
Wyoming	S 135	Died 3/2/2015	Makes knowing misclassification of an employee a violation of workers' compensation act.  NOTES OF INTEREST: To Senate Minerals, Business, and Economic Development Committee	Negative impact. No direct impact on classification determinations, but highlights continued focus on misclassification as a perceived prevalent employment practices abuse.