

August 16, 2018

The Honorable Philip Murphy
Governor of New Jersey
Office of the Governor
P.O. Box 001
Trenton, NJ 08625-0001

Dear Governor Murphy:

I am writing on behalf of the Intermodal Association of North America, the only transportation trade association representing the combined interests of the intermodal freight industry. IANA's roster of more than 1,000 corporate members includes railroads, ocean carriers, ports, intermodal truckers and over-the-road highway carriers, intermodal marketing and logistics companies, and suppliers to the industry. Our motor carrier, water and rail members transport over 90% of the intermodal cargo moving throughout the United States.

In this capacity, I am respectfully sharing our concerns regarding statewide efforts to address worker misclassification - specifically, reclassifying independent contractor drayage drivers as employees. IANA must speak out against any mischaracterization of this vitally important link in our nation's supply chain. We are aware that New Jersey has several efforts underway focusing on the status of independent contractors. These include:

- the establishment in May 2018, by your Executive Order, the Task Force on Employee Misclassification, charged with examining the existing laws and their enforcement;
- New Jersey Senate Bill 1293 and General Assembly Bill 3022 implementing revisions to the "ABC" test widely used for employee/independent contractor determination; and
- the New Jersey Department of Labor's proposal to eliminate the IRS 20-Factor Test as acceptable evidence for exemption from the "ABC" test for an independent owner operator.

We respectfully note that these activities, in our view, will move the State toward the reclassification of independent contractors into employees. This will in turn create hardships that will negatively impact the economic vitality, freight volume, and port operations in New Jersey, as well as harm business operators that currently work in the state. We also believe it will cause businesses related to the intermodal freight industry to think twice before they decide to conduct business in the State.

According to the Association of Bi-State Motor Carriers, 80 percent of the 14,000 truckers, approximately 11,000, that serve the Port Authority of New York and New Jersey are independent contractors. For over 35 years, the prevailing business model for trucking services that support intermodal freight movements by water and rail has been the independent contractor. As an independent business owner, drayage drivers quintessentially express their freedom of choice to operate their own company and personally invest in its assets. Those assets include a valid Commercial Driver's License, ownership of the tractor, and the associated operating costs attributable to registration, licensing, insurance, fuel, and their knowledge and daily application of Federal and State regulations governing the safe operation of the vehicle. In certain cases, independent contractors also operate under their own USDOT-approved operating authority while retaining a separate customer base.

As independent business owners, these individuals fulfill their Federal and State tax obligations like any other small business owner. They also employ their own discretion in executing operating decisions regarding how many motor carriers they offer their services to, and freely enter into multiple contractual arrangements, since they are able to make daily operating decisions as to their availability to perform these services.

Each owner-operator makes a conscious choice to remain an independent contractor, but also has the ability to secure full-time employment in the trucking industry if dissatisfied with his or her current working arrangements. For several decades a well-documented and well-publicized driver shortage has existed in the U.S., and anyone with a valid CDL is a coveted asset. These issues of driver shortage and low retention rates are highlighted in the American Transportation Research Institute's report on *An Analysis of the Operational Costs of Trucking: 2016 Update*, as well as being ranked as the top concern by the trucking industry in ATRI's *Critical Issues in the Trucking Industry – 2017*. If New Jersey moves forward on these initiatives, it will clearly exacerbate an already untenable situation.

During the first half of 2018, The Port Authority of New York and New Jersey reported record cargo volumes, up 6.8 percent over the same period in 2017, and continued investment in its infrastructure and cargo handling capabilities. While the Port of New York and New Jersey provides critical logistical support to your State and the region, there are also discretionary cargoes that enter the Port for transportation to inland, domestic destinations. Competition for this discretionary cargo is extremely fierce among east coast ports and any increase in costs is constantly evaluated and optimized based on many variables such as supporting highway costs (labor, tolls fuel price, etc.) and connecting rail services. With the state's significant investment in the Bayonne Bridge Project, a competitive operating environment at the Port of New York and New Jersey is necessary to enable a return on this investment and to ensure that these discretionary cargoes would remain, thus positioning the Port for anticipated expansion, and generating job growth, wages and tax revenues for the State of New Jersey.

If any of New Jersey's efforts around misclassification are successfully implemented, they would impose adverse and potentially unlawful regulatory requirements on drayage motor carriers serving the Port of New York and New Jersey, as well as other vital freight-related facilities throughout New Jersey. Forcing a change to the current independent contractor model would result in increased costs to motor carriers, who would then have to raise rates for the shipping community with further consequences affecting local, regional and national consumers. Additionally, it would negatively impact water and rail transportation service providers which rely on drayage motor carriers as an indispensable link in the transportation of intermodal freight and an intricate component of the global supply chain.

We appreciate your consideration of IANA's views on the very important issue of employee misclassification. Please contact me if you or your staff would like to discuss our position in further detail.

Sincerely,



Joanne F. Casey
President and CEO
Intermodal Association of North America