



Independent Contractors

NACD Position

Chemical distributors, like all logistics-based companies, rely on a mix of employed and contracted labor that reflects the dynamic nature of the industry. Whether it is for warehousing, sanitization, or transportation work, many companies choose to contract rather than hire labor because contracting enables companies to adjust their labor force based on demand. In the case of independent drivers, contracting enables them to maximize the amount of time they spend working and control the circumstances of their work.

NACD supports:

- Use of long-established test methods for determining a contractor relationship that reflect the widely varying applications of independent contractors;
- Harmonization of definitions used by the various federal agencies to determine a contractor relationship; and
- Permanent legislative definitions of a contractor relationship that are less subject to the changing political dynamics of presidential administrations.

Policy Background

Independent contractors have been a cornerstone of American business for decades – long before the advent of the gig-economy. Among the most prominent independent contractor roles, and one that is greatly utilized by chemical distributors, is that of the independent owner-operator truck driver. The benefits of a contracted driver are twofold in that a company only pays for the one-way delivery and the driver is free to optimize his routes with differing loads to prevent empty drives and increase earnings.

In 2018, the California Supreme Court decided a case titled *Dynamex Operations West v. Superior Court of Los Angeles County*, which held that workers are presumptively employees and that hiring entities in the state must satisfy the “ABC Test” in order to consider a worker an independent contractor. Following this decision, the California State Legislature passed the infamous AB5, which codified the decision made in the *Dynamex* case. Following an outcry from members of both the business and contractor communities alike, various court decisions and legislative carveouts have exempted key contractor examples such as independent trucking.

Latest Action

Currently introduced are S. 2973 and H.R. 4609 from Senator Tim Scott (R-SC) and Rep. Elise Stefanik (R-NY-21) that would require the adoption of the common law test – a test already in use by the IRS and other agencies – for purposes of the Fair Labor Standards Act (FLSA). NACD supports this legislation.

On the state level, several state legislatures including those of New Jersey and New York have introduced bills similar to California's AB5 using a modified version of the already-problematic "ABC Test." As of now, it is unknown if the same exceptions for truckers would apply. NACD strongly opposes implementation of these bills.