Owner-Operator Independent Drivers Association

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To Members of the U.S. Senate:

OOIDA represents 150,000 owner-operators leased to motor carriers, small-business motor carriers with their own operating authority, and employee truck drivers. We are in a unique position to offer a diverse perspective on worker classification in the trucking industry and the impacts of S. 567, the Richard L. Trumka Protecting the Right to Organize (PRO) Act. While we believe there is much that must be done to improve working conditions and compensation in trucking, the PRO Act would create confusion for drivers and motor carriers and jeopardize small-business truckers' ability to continue working as an independent contractor. We therefore must oppose the PRO Act.

The owner-operator model has a well-established history and provided millions of truckers the opportunity to be true independent contractors and small-business entrepreneurs. As a leased owner-operator, a trucker leases their equipment to a carrier and agrees to operate the equipment under the motor carrier's authority. There are federal regulations, known as Truth-in-Leasing (TIL) Regulations (49 CFR § 376.12), that dictate specific requirements for these leases that help protect truckers and the public. Through this model, leased owner-operators work with motor carriers as independent contractors. These practices have been in place for well over 40 years, far predating recent discussions around worker classification and the "gig economy."

The PRO Act would create uncertainty for drivers and motor carriers utilizing this owner-operator model. This legislation would establish a new definition of "employee" under the National Labor Relations Act (NLRA) using the ABC Test. Leased owner-operators are likely to fail the "B Prong" of this test because leased owner-operators are generally in the same course of work as the hiring entity's business. Therefore, owner-operators would be forced to be reclassified as an employee or make significant changes to their operations that may not be in their best interest.

While we understand the intent of the PRO Act is to specifically address classification for the purposes of labor organizing, in practice, employers would likely use this test to classify their workers under **all** laws. The Biden Administration itself has said this is likely in its Notice of Proposed Rulemaking (NPRM) for worker classification under the Fair Labor Standards Act (FLSA) [WHD-2022-0003]. The Department of Labor's NPRM assumes, *"that employers are likely to keep the status of most workers the same across all benefits and requirements,* including

for tax purposes [emphasis added]**.**"[1] The NPRM further notes that to, "the extent that businesses making employment status determinations base their decisions on the most demanding Federal standard, *a rulemaking addressing the standard for determining classification of worker as an employee or an independent contractor under the FLSA may affect the businesses' classification decisions for purposes of benefits and legal requirements under other Federal laws* [emphasis added]."[2]

Taken together, the NPRM recognizes that changing the classification test for one set of federal requirements is likely to affect a business' decision on how to classify a worker for all requirements, particularly when a more "demanding" standard is being implemented. There is no reason to think that the changes to the NLRA under the PRO Act wouldn't have the same effect.

We recognize that some truck drivers are certainly misclassified and are open to working with Congress to address this issue. Misclassification in trucking is generally done through "lease-purchase" agreements which are schemes where motor carriers lease a truck to a driver with the promise of independence and entrepreneurial opportunity. But because of the terms of these arrangements, drivers have no real chance to ever obtain this. The most problematic lease-purchase schemes are those in which a driver leases a truck from a motor carrier, only to lease the truck back to that same motor carrier. In other words, drivers are making lease payments to a carrier for a truck that they are then leasing back to and operating for a carrier. Drivers have no independence in these situations, and motor carriers can avoid the responsibilities of employment laws.

If Congress really wants to help improve working conditions and compensation for truckers, it could start by repealing the overtime exemption for employee truck drivers. Under the FLSA, truckers are specifically exempt from guaranteed overtime pay. This provision makes it the law that a driver's time is less valuable than other workers, and it should be eliminated.

Trucking is a challenging career and there are many changes that should be made to improve compensation and working conditions for drivers. We look forward to working with Congress to navigate these challenging issues to find solutions that raise workplace standards for all drivers in the industry. Addressing these issues can be accomplished without abandoning the owner-operator model.

Thank you,

Todd Spencer
President & CEO
Owner-Operator Independent Drivers Association, Inc.

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[1] Employee or Independent Contractor Classification Under the Fair Labor Standards Act, 87 Fed. Reg. 62268 (October 13, 2022)
[2] Ibid.