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## Unions Want Limits on Firms' Use of Contractors

By MELANIE TROTTMAN

Unions are stepping up a campaign to get the Obama administration to crack down on companies that treat workers as independent contractors instead of employees—a practice that effectively puts tens of thousands of workers out of reach of labor organizers.

Change to Win, a labor coalition that includes the Teamsters and the Service Employees International Union, will release Wednesday a report critical of trucking companies that serve big ports, charging they improperly classify many truck drivers as independent contractors. Whether workers are employees or contractors is a contentious issue across a range of industries including construction, home health care, and transportation.

"We plan to use this report as further proof to take to the administration to say 'we know you want to help, you need to do it more quickly,'" said Fred Potter, director of the Teamsters port division and a vice president for the union. He and other union officials plan to push the government to file lawsuits and boost enforcement of relevant tax, employment and safety laws.

The Obama administration has signaled support for tougher scrutiny of worker classification and independent contractors. Officials say what's known as "worker misclassification" costs the government billions in unpaid taxes.

Seth Harris, the deputy secretary of labor, told Congress this year that the agency is considering a rule that would propose employers perform a written analysis of how they determine each worker's status. The employers would have to document that analysis and keep it on file as proof. Employers now don't have to officially walk through those steps but say they keep them in mind when hiring workers.

Robert Digges, chief counsel for the American Trucking Associations, an industry trade group, said most port truck drivers are indeed independent contractors—but legally. This gives drivers flexibility, said Mr. Digges, though he's concerned about being challenged because it could lead to costly litigation.

"All of this is just to simply turn these people into employees one way or another so that unions can make the effort to organize them," he said.

Mr. Obama's federal budget for fiscal 2011 allotted money and outlined plans for the Internal Revenue Service and the Labor Department to work together to address the issue.

This includes more enforcement agents for the Labor Department and more proposed help for the IRS to determine how to properly clarify worker status. Still, some union officials say they want faster results.

Vice President Joe Biden has said that stopping worker misclassification remains a priority for President Barack Obama's Middle Class Task Force.

An August 2009 GAO report said the extent of misclassification is unknown, but the administration has said studies suggest it might affect 10 to 30% of U.S. companies.

The Labor Department and IRS declined to comment on their coming plans for misclassification, or whether they'll target the port truck-driving industry.

Businesses say unions are trying to exploit what can be a fuzzy line in determining a worker's employment status. Businesses are supposed to use several factors to determine how to classify a worker, including their degree of control over a worker.

In the union study obtained by The Wall Street Journal, the authors claim 82 percent of the nation's 110,000 port truck drivers are classified as independent contractors even though they lack the autonomy that most small businesses should have under law. The study, shepherded by Change to Win, the National Employment Law Project and Rutgers University, says companies control the hours the drivers work and their pay rates—which the unions say can amount to hourly rates below minimum wage.

The drivers are required to lease or buy their own trucks and pay maintenance and operational costs that drain their gross pay, the study says. As a result, drivers treated as independent contractors net 18% less than employees and are more than two times less likely to have health insurance and retirement benefits, the union study says.

Joshua Owen, President of Ability Tri-Modal, which employs and contracts port truck drivers in California, said port trucking companies have a seasonal business and have to adjust their number of workers accordingly. The money the drivers make, he said, "depends on who they are, how hungry they are."

**Write to Melanie Trottman at [melanie.trottman@wsj.com](mailto:melanie.trottman@wsj.com)**

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