

# CURRENT STATE OF INDEPENDENT CONTRACTORS IN THE TRANSPORTATION SECTOR

## The current state

State and federal laws are challenging the independent contractor (IC) status of Owner Operator truck drivers, causing carriers to consider changes to business practices. [As the battle with AB-5 in California continues](#), many California-based carriers are scrambling to make adjustments to their fleets to remain compliant with legislation. The concern for many in the industry - both in and outside of California - is whether this trend will spread throughout the country via the [PRO Act](#), and/or whether predominantly democratic states will adopt AB5-like laws of their own (such as [New Jersey's SB 4204](#)).

While the landscape continues to evolve, new legislation and changes to driver preferences continue to compound the ever-increasing driver shortage, creating new challenges for the industry to keep pace with.

## Legislation

When developing or refining an independent contractor platform, carriers must create a system that offers an “affirmative defense” against possible litigation or enforcement of labor laws. Some carriers are evaluating alternative capacity models such as the [two-check approach, offering W2's to all drivers](#), or [solo broker relationships](#). These models all present complex issues of their own. The current legal environment further exacerbates the driver shortage issue, as it threatens business preferences of independent contractors.

## Driver preferences & the driver shortage

In effort to manage capacity risk, some motor carriers have opted to increase driver pay. Another survey conducted by ATBS found that 24% of carriers plan to increase rates paid to ICs in 2021. These increased rate considerations range from .01% to more than 5%; however, as carriers increase rates, they will have to find new ways to create operational efficiencies and maintain profit margins.

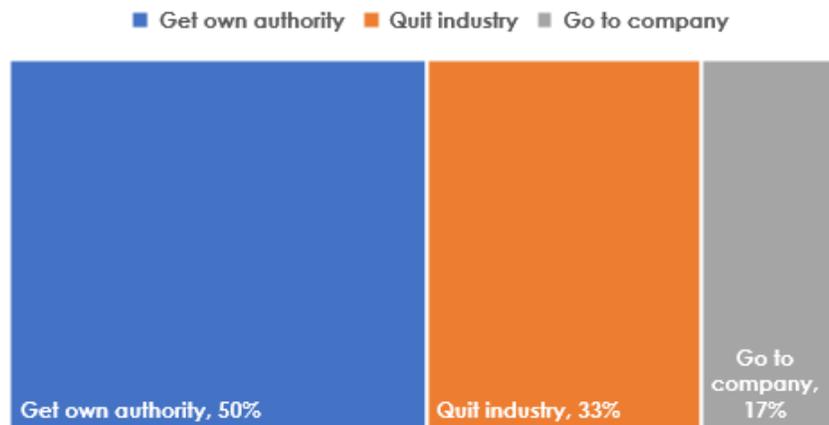
	2017	2018	2019	2020 Q1	2020 Q3	2021 Q1
<b>Percent Pay Fleet</b>			50%	51%	37%	
<b>No rate increase</b>	55%	37%	25%	28%	26%	
<b>0 to 2%</b>	25%	14%	10%	22%	16%	
<b>3% to 5%</b>	17%	24%	15%	0%	4%	
<b>More than 5%</b>	3%	24%	0%	0%	4%	

*ATBS Survey question: Do you plan to increase the rates paid to your ICs this year (2021)?*

One of the primary concerns with increasing pay based on capacity is that when drivers are paid more, they drive less. Recent findings indicate that one solution to driver shortage may be lifestyle centered and not financial. Many drivers want to be home *at least* weekly, if not daily. As carriers find ways to build flexibility into their routes, these results could lead to higher retention.

Another recent study completed by American Truck Business Services (ATBS) illustrates that only 17% of ICs, if legally forced out of IC status through the PRO Act, would move to a company driver position, and 33% *would leave the industry altogether*. These numbers underscore the notion that many drivers have an entrepreneurial preference to maintain their IC status. Should independent contractor opportunities become scarce due to changing regulation, this could further impact the driver shortage.

### Driver intention upon passing of PRO Act



### Conclusion

The growing demand for freight, the driver shortage, and legal complexity surrounding IC status are all here to stay. We encourage motor carriers to stay current on industry trends and legal changes as they consider the underlying needs of drivers, regardless of independent contractor or employee status.

TrueNorth is committed to helping clients **protect** and **maximize** their utilization of ICs. We would welcome the opportunity to learn more about your organization and discuss how we are helping companies manage IC risk and growth strategies.

#### Sources:

- [https://www.scopelitis.com/news-analysis/Law\\_Alert\\_9th\\_Circuit\\_Rules\\_AB5\\_Not\\_Preempted/](https://www.scopelitis.com/news-analysis/Law_Alert_9th_Circuit_Rules_AB5_Not_Preempted/)
- <https://www.freightwaves.com/news/pro-act-with-its-abc-test-set-for-house-vote-this-week>
- <https://www.littler.com/publication-press/publication/new-jersey-bill-would-bring-california-style-abc-test-garden-state>
- <https://www.overdriveonline.com/business/article/15065269/federal-court-deals-blow-to-california-ownerops-with-ab-5-ruling>
- <https://www.atbs.com/>

This publication has been prepared by TrueNorth Companies, L.C. and is intended for informational purposes only. Transmission of this publication is not intended to create, and receipt does not constitute, a client relationship with TrueNorth Companies, L.C. This publication does not constitute any type of representation or warranty, and does not constitute, and should not be relied upon as, legal advice. This publication is not a contract and does not amend, modify or change any insurance policy you may have with an insurance carrier. © 2021 TrueNorth Companies, L.C. All rights reserved.