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GREENLIGHT



Distribution drivers: Employees or independent contractors?

BY JEFF VONKAENEL / jeffv@newsreview.com

This column will not make me popular

among my fellow newspaper publishers. I believe that adult newspaper delivery carriers should not be classified as independent contractors—and that they never should have been. That is why, unlike many newspapers such as The Sacramento Bee, we classify our drivers as employees.

I support much of the underlying philosophy of Assembly Bill 5, the California law that took effect on Jan. 1, that reclassifies many previously independent contractors as employees. While there are some significant problem areas in the new law, AB 5 enacted many much-needed reforms.

By classifying people as independent contractors, certain California employers were able to avoid paying minimum wage and overtime and granting benefits including sick leave, unemployment insurance, workers' compensation and health care. That saved these employers an estimated 30% of their total compensation budget. And because of this, the state of California loses an estimated \$8 billion in payroll taxes.

I've always known that the vast majority of newspaper companies were classifying their delivery drivers as independent contractors. McClatchy, the company that owns The Bee, has been in expensive litigation with the state for years regarding their newspaper delivery independent contractors.

In fact, I am the only newspaper publisher I know who has always treated distribution drivers as regular employees, even though our drivers only work one or two days each week. Because I categorize these part-time delivery drivers as employees, I have a workforce of 119 instead of 71. For this reason, we do not qualify as a California small business, which makes it harder to get state contracts. No good deed goes unpunished.

Every year, a consultant calls me up and says they can help me reduce my delivery cost by 30%. When I ask them how, they tell me they will help me convert the distribution team to independent contractors.

I tell the consultants that there is no way my drivers are independent contractors. One of the tests of being an independent contractor is that the person is "free from the control and direction of the hiring entity in connection with the performance of the work." We tell our drivers when to work, where to go and how many papers to distribute. There is no way that our distribution drivers are free from our control.

The second test is that the individual performs "work that is outside the usual course of the hiring entity's business." Delivering the weekly newspaper is clearly part of our business.

So over the years, I've continued to tell these consultants "no." I care about our drivers. I want them to qualify for workers' compensation and other protections. I resent that I have to compete with other companies who don't play by the same rules.

The newspaper industry put a lot of pressure on the Legislature on AB 5. They editorialized against it. They argued that our industry is in so much financial trouble that classifying our drivers as employees would be the straw that breaks the camel's back. It is true that the industry is in trouble. But this is just a straw. Facebook is a ton of bricks. Nevertheless, the Legislature gave the newspaper industry an extra year before the provision impacts newspaper carriers.

Distribution drivers should be classified as employees. It is the right thing to do. □

Jeff vonKaenel is the president, CEO and majority owner of the News & Review.



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