

Press Coverage | April 29, 2021

# Law360 Quotes New York Partner Richard Reibstein on 9th Circuit Ruling That Federal Transportation Law Does Not Shield Trucking Companies From California Independent Contractor Law

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**Richard Reibstein**, a New York Partner in Locke Lord's Labor and Employment Practice Group and co-head of the Firm's Independent Contractor Misclassification and Compliance Practice, was quoted by Law360 on a Ninth Circuit decision holding motor carriers are not shielded from California's strict independent contractor classification standard by preemption language in the Federal Aviation Administration Authorization Act (FAAAA). Reibstein noted the ruling is "hardly dispositive." He added: "On any three-member panel decision that includes a dissent, en banc consideration is likely, especially in a case like this that has outsized significance to a critical industry like trucking."

Reibstein also noted that "the dissent pointed out that the Ninth Circuit majority's decision deviates from the First Circuit's 2016 decision in *Schwann v. FedEx*, which found that Massachusetts' [independent contractor] test was preempted by the FAAAA."

He stated that the case may eventually be heard by the U.S. Supreme Court, adding: "The Massachusetts ABC test is virtually identical to the ABC test in California. No other state's ABC test is like those in California and Massachusetts, so decisions on FAAAA preemption applying different ABC tests by other circuit courts, such as the Third and Seventh circuits, are like comparing apples and oranges."

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