



## **The IWLA Government Affairs Update**

**April 2, 2024**

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### **Immediate Warehouse Issues**

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#### **OSHA Issues Final Rule on the Worker Walkaround Representative Designation Process**

On Monday, OSHA issued its Final Rule on the worker walkaround representative designation process, which will go into effect May 31, 2024. The rule allows employees to choose a third-party representative, such as an outside union representative or community activist, to accompany an OSHA inspector into nonunion facilities. The Final Rule clarifies that a third party may be reasonably necessary because of their relevant “knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills.” The rule references unions as an option for this third-party expert and quotes several comments from unions supporting this designation. In anticipation of the rule’s May 31 effective date, employers should ensure they have written procedures in place that clearly instruct management on how to receive OSHA inspectors who wish to gain access to the jobsite. These procedures should also address how management should respond if a non-employee third-party is designated as the employee representative during the inspection. Employers with questions or concerns about OSHA’s new rule should contact their employment counsel. [Read OSHA Press Release](#) [Read Final Rule](#)

#### **Controversial Joint Employer Rule Struck Down Just Before Taking Effect**

In an eleventh-hour decision, a federal court judge in Texas just struck down the Labor Board’s controversial joint employer rule right before it was set to take effect on March 11. The NLRB had aimed to make it far easier for workers to be considered employees of more than one entity for labor relations purposes – a move that would have resulted in increased union organizing and collective bargaining efforts across the country – but the court’s decision halted it in its tracks. The fight will continue, however, as there is little doubt the agency will appeal the decision in hopes of resurrecting the rule in the near future – and a whole separate court battle over the same issue takes place in D.C. Friday’s court ruling confirmed that the 2020 version of the joint employment standard remains in effect. Under this status quo, an employer is only considered a joint employer of a separate employer’s employees if the two businesses share or co-determine the employees’ essential terms and conditions of employment. These include wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction. Equally as important, a business must possess and actually exercise substantial direct and immediate control over the employees’ essential terms and conditions of employment in order to be considered a joint employer – and in a manner that is not sporadic and isolated. [Read More](#)

#### **IWLA Signs Letter of Support for Legislation Requiring Union Salt Disclosures**

IWLA, in coalition with the Coalition for a Democratic Workforce (CDW), will be sending a letter to all members of the House urging them to support the Start Applying Labor Transparency (SALT) Act, which would require unions to register “salts” with the Department of Labor (DOL). Salts are paid by unions to get jobs at non-unionized workplaces with the intention of persuading workers to organize. They often promote workplace discord and spy on coworkers to obtain information about the employer or workers to use during an organizing drive or labor dispute.

The SALT Act would provide much-needed transparency for workers by requiring unions and salts to disclose their actions to DOL. [Read Letter](#)

## **Baltimore Bridge Collapse to Impact Trucking, Shipping**

The collapse of Baltimore's Francis Scott Key Bridge is diverting shipping and trucking around one of the busiest ports on America's East Coast, creating delays and raising costs in the latest disruption to global supply chains. After the containership Dali hit the bridge and brought it down early March 26, ship traffic entering and leaving the Port of Baltimore was suspended indefinitely. That will require rerouting vessels or their cargo to other ports, potentially causing congestion and delays for importers. Six people, part of a crew that had been filling potholes on the bridge, remained missing and were presumed dead hours after the span came down. "Aside from the obvious tragedy, this incident will have significant and long-lasting impacts on the region," American Trucking Associations spokesperson Jessica Gail said, calling Key Bridge and Baltimore's port "critical components" of the nation's infrastructure. The busiest U.S. seaport for autos and light trucks, the Port of Baltimore is a key economic engine for the city and the state, directly employing over 15,000 workers and indirectly responsible for nearly 140,000 more jobs in trucking, warehousing and other related industries. [Read More](#) [Read Even More](#)

## **Congress Pushes Back Against EPA's Overreach with its RMP Rule**

Today, Congressman Dan Crenshaw filed a Congressional Review Act Joint Resolution to roll back the Environmental Protection Agency's (EPA) latest Risk Management Program Rule, which requires burdensome reporting requirements on facilities working with and housing hazardous substances. The Congressional Review Act allows Congress to hold a vote to revoke a regulatory rule if the Joint Resolution is filed within 60 days of it becoming final. The facilities that fall under the RMP have shown an impressive track record in incident prevention and process safety. Since the program began in 1996, RMP reportable incidents have decreased by over 80 percent, proving that existing regulations and voluntary industry efforts are effective in managing risk. These improvements can be attributed to existing performance-based regulatory frameworks, and industry-led initiatives to continually improve operating practices and maintain a strong safety culture. In addition to being unnecessary, the final rule will significantly increase compliance costs for these facilities. In its initial proposal, EPA estimated the annual cost of the rule to be \$75 million, but the Agency now estimates the annual cost of the rule to exceed \$257 million. This large cost difference is due to the scope of new regulatory requirements that have been greatly expanded. [Read Background](#) [Read Crenshaw Press Release](#)

## **Federal Judge Denies CTA Challenge to California AB 5**

A federal district court has delivered a setback to the California Trucking Association (CTA) as the group continues efforts to block the state's enforcement of a controversial law that aims to reclassify independent contractors as motor carrier employees. On March 15, the U.S. District Court for the Southern District of California denied CTA's request for a new temporary injunction that would block California from enforcing the so-called AB 5 law. The group previously had won an injunction to block it. In its legal filings CTA has claimed that the law's three-pronged "ABC" test for worker status determination cannot be enforced against the trucking industry. The B-prong requires that the individual is customarily engaged in an independently established business. CTA has argued that AB 5 will force owner-operators to become motor carrier employees. In this latest challenge, CTA renewed its claim that AB 5 was, in fact, pre-empted by a federal deregulatory statute. But the district court held that an implied pre-emption claim was unproven. This renewed request came after a federal appellate court rejected CTA's earlier attempt to stop enforcement of AB 5, and the U.S. Supreme Court's denial to hear the case. [Read More](#)

## **UPS Plans to Close Around 200 US Facilities, Shift Volume to Automated Hubs**

UPS aims to close around 200 U.S. facilities as it shifts more volume into a growing number of automated package hubs, a top executive said during the logistics giant's investor and analyst conference last Tuesday. The company is consolidating locations as part of its "Network of the Future" initiative, which aims to reduce UPS' reliance on manual labor in its package sortation operations and save \$3 billion by the end of 2028, said Nando Cesarone, EVP and President U.S. Additionally, UPS is closing 40 sorts this year — up from 30 in 2023 — and seeks to automate other aspects of its operations, such as dispatching for package cars and feeder trucks moving volume in its network. "Network of the Future is targeting all activities for automation within our four walls," Cesarone said. "These building consolidations and automations yield real savings. For example, we'll have fewer feeder runs. We'll be able to eliminate both a.m. and p.m. ground and air feeds in many, many locations." Examples of UPS' cost-saving efforts, according to an investor presentation, include consolidating four facilities in Massachusetts, Connecticut and

Rhode Island into nearby hubs. The company also plans to shutter its Chalk Hill facility in Texas and its New York Capital Village Center hub while modernizing nearby facilities to help handle volume growth. [Read More](#)

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## Updated Warehouse Issues

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### **Cargo Volumes Skyrocket to Pre-Pandemic Levels at Port of Los Angeles**

Cargo volume has skyrocketed at the Port of Los Angeles over the last year, according to new numbers released on March 18. In a media briefing, Port of Los Angeles executive director Gene Seroka laid out how the port has seen a 60 percent year-over-year increase in February in the number of Twenty-Foot Equivalent Units (TEUs) processed. To start 2024, the Port of Los Angeles has already moved around 1.6 million TEUs, marking a 35 percent bump over that same period last year. Seroka says that number is roughly in line with what the port was processing before the pandemic in 2019. “Market confidence in our gateway is as strong as it’s ever been,” Seroka said, sharing that the port is operating at an estimated 75-80 percent capacity. “We’ve got the world’s best longshore workforce eager to work with a long-term contract in place, and our current operational data indicates that cargo is flowing efficiently, with additional capacity available.” [Read More](#)

### **Investment Surges in Mexico as Companies Shift Supply Chains, Plan New Factories**

Investment in Mexico has surged in the first three months of 2024 as more companies are looking south of the border to establish supply chain and manufacturing hubs, officials said. From January through mid-March, Mexico has received investment commitments worth more than \$31 billion, compared to \$36 billion total in 2023. “Mexico has become the greatest attraction in the world for investments,” Mexican Secretary of Economy Raquel Buenrostro said during the 41st general assembly of Mexico’s Business Coordinating Council (CCE) on March 19. The CCE is one of the country’s most influential organizations representing Mexico’s private sector. Buenrostro said nearshoring continues to play a big role in attracting more investments to the country. “[Nearshoring] is here to stay and that is not going away,” Buenrostro said. “We have to see how we integrate and how we take advantage of these opportunities at this moment.” Buenrostro said between that Jan. 1 and March 15 there have been 73 investment announcements by both foreign and domestic companies. [Read More](#)

### **Canada to Raise Capacity at Port of Thunder Bay**

Canada is investing C\$6.7 million from its National Trade Corridors Fund on two projects to improve and increase capacity at the Port of Thunder Bay, a key grain transport hub. “Given the importance of the terminal to our country’s economy, this funding is welcome news not just for Northwestern Ontario, but also for the prairies and our entire country,” said Marcus Powlowski, a Thunder Bay-Rainy River member of Parliament. “Today’s investment will upgrade the port and Keefer Terminal’s ability to handle goods. The terminal is a gateway to Canada. It handles a variety of items ranging from important components needed for tar sand and mining projects, to gigantic components for wind turbines, to fertilizer needed for prairie farmers,” Powlowski said. The government investment will use money from its national C\$4.6 billion trade corridors fund, meant to improve reliable trade flows globally, increase exports and maximize efficiency in Canada’s transportation system. Built to give Western Canadian grain producers access to European markets for what is billed as the longest grain supply chain in the world, Port of Thunder Bay is located at the Western Canadian terminus of the St. Lawrence Seaway System, the largest inland waterway in the world. [Read More](#)

### **Three Warehouse Real Estate Markets to Watch in 2024**

Buoyed by a flood of warehouse capacity hitting markets across the U.S., industrial real estate tenants are looking to expand their presence this year into both familiar and emerging markets. Commercial real estate firm CBRE expects an uptick in leasing activity as companies grow their warehouse footprints, said James Breeze, vice president and global head of industrial and logistics research. “Despite all the economic uncertainty, consumers continue to consume,” Breeze said. “That means that some occupiers who are waiting are just going to have to get back into the game and restart their expansion plans.” But which markets are logistics and warehouse operators likely to expand into? Location, labor availability, local regulations and individual company needs all play a part in leasing decisions. However, in conversations with industrial real estate experts, three markets emerged as likely hot spots this year; Savannah, Georgia, Southern California, and El Paso, Texas. [Read More](#)

## **Panama Canal Adds Transit Slots As Restrictions in Crucial Corridor Begin to Ease**

The Panama Canal is adding transit slots as restrictions in the corridor begin to ease. According to the Panama Canal Authority (ACP), a pair of slots are up for auction for transit dates starting on March 18, with an additional slot for dates beginning on March 25. The ACP could add more slots if rainfall raises levels at the lakes servicing the Panama Canal. This is after historically low water levels brought on by a lack of rainfall reduced daily traffic by almost 40 percent in late 2023 and early 2024. Over that period, many ships have been forced to take longer, more costly routes, all while the ongoing crisis in the Red Sea has complicated a crucial alternative to the Panama Canal. Even so, with the ACP adding transit slots on top of better-than expected rains in late 2023, conditions appear to be improving, at least for now, in the critical shipping lane. [Read More](#)

## **Maersk Seeks Bigger Stake in Booming Cross-Border Market**

A.P. Moller — Maersk opened a warehouse in Tijuana, Mexico, in response to increased growth and demand for cross-border services in the country, the company said in a March 21 press release. Maersk's new 322,917 square foot warehouse is located near the ports of Los Angeles, Long Beach, and Ensenada, Baja California. The company said it is focused on expanding in Tijuana to capture market share in the technology, automotive, retail, and lifestyle business segments. Maersk's footprint in Mexico already spans over 1.6 million square feet, including warehouses in key hubs like Mexico City and Tijuana, Baja California. The company has plans to expand in Guadalajara, Jalisco and Monterrey, Nuevo Leon, and by providing customers with landside capabilities or facilitating cross-border trade. The logistics provider also seeks to leverage its IMMEX program, abbreviated for its initials in Spanish, which will allow Maersk to offer sorting, storage, cross-docking, inventory management, labeling, packaging, re-packaging and order fulfillment services. [Read More](#) [Read Maersk Press Release](#)

## **Mississippi River Shipping Faces Potential Crisis for Third Straight Year**

Shipping along the Mississippi River could prove to be a massive headache in 2024, per a recent report from the National Oceanic and Atmospheric Administration. An unusually warm and dry winter — which allowed the Upper Mississippi River shipping season to begin earlier than usual this year — might herald drought conditions in key areas of the Mississippi River Basin over the coming months. “Of growing concern will be the potentially low flows on the Mississippi River this summer into fall due to well-below [average] snowpack and precipitation in most of the Northern Plains and Midwest,” Ed Clark, director of NOAA's National Water Center, said in the report. “This could have potential impacts on those navigation and commercial interests that depend on water from the Mississippi River.” If this forecast comes to pass, it would mark the third consecutive year in which the Mississippi River was at risk of bottlenecks. [Read More](#)

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**Questions?** Contact [Bruce Linderman](#) or call 847.813.4698

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*The IWLA 3PL Matters Update is designed to inform you on legislative and regulatory issues that directly impact and affect your warehouse and how you conduct business. The 3PL Matters Update is disseminated every three weeks and provides a look at recent developments and activities from the prior three weeks, as well as a look at what to expect in the upcoming weeks.*

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