



The IWLA Government Affairs Update

March 12, 2024

Immediate Warehouse Issues

Texas Judge Vacates DOL Joint Employer Rule

Judge J. Campbell Barker of the U.S. District Court for the Eastern District of Texas vacated the National Labor Relations Board's joint employer rule late Friday. The rule was set to go into effect Monday. The new rule would be "contrary to law" and "arbitrary and capricious," Barker ruled. The court had been considering a legal challenge brought in November by the U.S. Chamber of Commerce, along with other business groups, including IWLA. Federal agencies and employers now await a possible court decision on the U.S. Department of Labor's independent contractor rule, also set to go in effect Monday. The U.S. Chamber of Commerce celebrated the ruling in a statement released Saturday. "This ruling is a major win for employers and workers who don't want their business decisions micromanaged by the NLRB," said Suzanne P. Clark, president and CEO of the Chamber. "It will prevent businesses from facing new liabilities related to workplaces they don't control, and workers they don't actually employ." [Read More](#) [Read US Chamber Press Release](#)

McConnell to Step Down as Senate GOP Leader Post-Election

Republican Mitch McConnell will step down as his party's leader in the Senate after the November election, he said. McConnell, 82, a fixture in the Senate since 1985 and the chamber's longest serving party leader in history, has led Senate Republicans for more than 17 years. "Father Time remains undefeated. I am no longer the young man sitting in the back," he said on the Senate floor Feb. 28. "It's time for the next generation of leadership." McConnell, who is up for re-election in 2026, does not intend to retire from the Senate at the end of the year. "I still have enough gas in my tank to thoroughly disappoint my critics," he quipped. [Read More](#)

FMC Releases Final Rule on Detention and Demurrage

The Federal Maritime Commission released a new rule on detention and demurrage billing practices as part of its compliance with the Ocean Shipping Reform Act of 2022. Detention and demurrage billing practices were major problems for shippers during the pandemic. Ocean carriers collected about \$6.9 billion in detention and demurrage costs from 2020 to 2022, according to the FMC's final rule shared on Feb. 23. A key regulation the FMC outlines is the distinction of who receives an invoice: 1) Detention or demurrage invoices can be issued to either the person for whose account was provided services from the billing party and the person who contracted with the billing party; 2) Another option is the consignee, meaning "the ultimate recipient of cargo; the person to whom final delivery of the cargo is to be made;" 3) An invoice cannot be issued to both parties mentioned in the first bullet and the second bullet. Nor can a billing party issue an invoice to any other person. Another regulation from the final rule establishes a timeframe of 30 calendar days for which detention and demurrage invoices must be issued. The FMC said most of the rulings will take effect on May 26. [Read More](#) [Read FMC Final Rule](#)

U.S. EPA Finalizes Sweeping Changes to Risk Management Program

On March 1, 2024, the U.S. Environmental Protection Agency (EPA) announced the Safer Communities by Chemical Accident Prevention Rule, which ushers in several changes to the Risk Management Program (RMP) rule. The rule represents the latest salvo in a decade-long battle to amend the RMP program that stretches back to the Obama and Trump administrations. EPA's new final rule reintroduces key changes from past rulemakings that never took effect. It requires owners and/or operators of covered processes to make significant changes to their preexisting RMP

compliance plans, including to comply with more stringent requirements for accident prevention, emergency preparedness, and public disclosure of information related to accidental releases. The final rule is expected to be challenged by various interested parties. The RMP requirements largely parallel the Occupational Safety and Health Administration (OSHA) Process Safety Management (PSM) program. However, EPA places emphasis on the prevention of accidental releases of regulated chemical substances and the consequences of those accidental releases on human health and the environment in surrounding communities, whereas OSHA focuses on employee safety at workplaces. It is highly likely that the final rule will be challenged both by the regulated community and citizens' groups, as has happened frequently over the past 10 years. In the meantime, stakeholders should familiarize themselves with the new RMP requirements. [Read More](#) [Read ACD Press Release](#)

Amid Debate Over Rail Safety Concerns, Another Norfolk Southern Train Derails

With a Norfolk Southern derailment in Pennsylvania last Saturday that sent diesel fuel into a Lehigh Valley River, the already heated battle over control of the railroad with safety issues as a backdrop got even hotter. The derailment came after two days of charges, countercharges and missives flying back and forth over the safety records of both Norfolk Southern and Union Pacific, with leading government officials that regulate the rails leveling separate heavy criticism at the two companies. And while it hasn't yet provoked any government response, the issue of safety and levels of employment could also be triggered by last Friday's news that BNSF had implemented a significant number of furloughs. Saturday's derailment comes after two days of back-and-forth over two of the U.S.-based Class 1 railroads that left heads spinning. [Read More](#)

Teamsters Canada Warns Rail Strike Looms Over Pay, Hours at CN, CPKC

The union representing almost 9,300 workers at Canada's two biggest rail operators says the railroads are pushing toward a work stoppage after negotiations have deadlocked over issues of working conditions and wage increases. "CN and CPKC aim to eliminate all safety-critical rest provisions from our collective agreements," François Laporte, national president of Teamsters Canada, said in a news release on Monday. "These provisions are necessary to combat crew fatigue and ensure public safety. We want to reach a negotiated settlement, but their demands are non-starters for the Teamsters." On Feb. 16 Canadian National Railway Co. (CN) and Canadian Pacific Kansas City (CPKC) filed notices of dispute with the federal labor minister and requested the appointment of a conciliator for the bargaining process over a new collective bargaining agreement for train conductors, engineers and yard workers. The notice of dispute starts the clock on a possible strike or lockout, which could occur in 81 days, or early May. The collective bargaining agreements between TCRC workers and CN and CPKC expired Dec. 31. [Read More](#)

Threat of Strike Looms Large Over East, Gulf Coast Ports

There's an increasing abundance of skittishness surrounding the future of East and Gulf Coast ports. The labor contract between the International Longshoremen's Association and the United States Maritime Alliance (USMX) is set to expire at the end of September. The ILA represents some 70,000 dockworkers, while the USMX represents employers at 36 coastal ports — including three of the U.S.'s five busiest ports: the Port of New York and New Jersey, the Port of Savannah, Georgia, and the Port of Houston. Contract negotiations between the ILA and the USMX began in February 2023 but quickly foundered on the issue of wage increases. Developments since then have not been promising. In November, ILA leadership warned roughly 45,000 of its members to "prepare for the possibility of a coastwide strike in October 2024," after the current master contract expires. ILA President Harold Daggett also cautioned that there is no chance of extending the current contract past the expiration date. In other words, ILA dockworkers are fully prepared to swap pallet jacks for picket signs come Oct. 1. [Read More](#)

Updated Warehouse Issues

Louisiana Truckers Sue Over Independent Contractor Rule

Giving voice to its small and family-owned carriers, the Louisiana Motor Transport Association has joined a lawsuit filed by a local trucking company against the U.S. Department of Labor over changes to the classification of independent contractors. "Independent contractors are an integral part of the transportation industry, specifically trucking. Without independent contractors hauling products across the United States, it would completely break an already fragile supply chain," Renee Amar, LMTA executive director, explained. "We sincerely hope that the courts hear our case and understand that this is a complete overreach of the federal government. The relationship that

trucking companies have with independent contractors is a trusted model that protects everyone.” The lawsuit stems from a Jan. 10 final rule (effective March 11) by the DOL and its Wage and Hour Division that provided a new interpretation of the classification distinction between employees and independent contractors. [Read More](#)

Illinois Bill to Copy California Emission Regs Draws Heat

A wave of opposition is mounting in the Illinois General Assembly to a bill that would have the state follow California’s lead in adoption of strict emissions laws that would eventually prohibit sales of diesel-powered trucks in favor of zero-emission options such as electric vehicles. The U.S. Environmental Protection Agency in 2023 granted the California Air Resources Board permission to adopt regulations that require manufacturers to produce and sell increasing quantities of medium- and heavy-duty zero-emission trucks in the state. Some states, like Illinois, aim to follow suit. As of Feb. 21, 3,745 opponents had filed so-called witness slips in Illinois’ 103rd General Assembly against the legislation — officially known as [House Bill 1634](#) — compared with 539 backers. Matt Hart, executive director of the Illinois Trucking Association, said the outpouring of dissent “is the largest number of people I have ever seen who filed a witness slip in opposition to a trucking-related bill.” Hart is encouraging truckers in Illinois and those whose commercial vehicles pass through the state to contact Illinois lawmakers and its governor to share their views on the proposed new law. [Read More](#)

Imports Surge Under U.S. Trade ‘Loophole’ Surge

U.S. lawmakers are calling for a crackdown on the special trade provision that was designed to make life easier for U.S. residents when they return from abroad and bring souvenirs without paying duty. Instead, the loophole has allowed e-commerce giants Temu and Shein to flood the country with cheap imports by paying no duty on them. The Wall Street Journal says shipments using the customs *de minimis* rule are surging this year, with at least 485 million packages entering the U.S. so far this fiscal year, looking to easily outnumber the 685 million packages that were counted in the entire previous fiscal year. Under the provision, packages with contents under \$800 in value can enter the country duty free under a simplified procedure. Critics say that is helping companies sidestep tariffs and defy bans on imported goods made with forced labor. A House panel estimates that Temu and Shein alone account for about a third of all *de minimis* shipments. Meanwhile, freight industry officials say the trade has turned the two companies into major forces in trans-Pacific airfreight markets. [Read More](#)

Nearshoring Trend Drives More Border Growth

The nearshoring trend has been driving further transportation and logistics investments near the Mexican border as companies work to capture current and expected future growth. Nearshoring is the process of companies moving offshore operations to neighboring countries. Mexico has been a main focus of the trend with the country providing skilled but comparatively cheaper labor. U.S. Census Bureau data shows it is the top importer at 14.8 percent. “Overall, nearshoring has been pivotal for cross-border transportation — with Mexico ranked as the top U.S. trading partner in 2023,” said Ben Enriquez, head of Mexico logistics and customs at Uber Freight. “The nearshoring boom has continued to positively impact the Mexican economy and the market has favored shippers. Many companies are moving or enhancing their operations in Mexico.” Uber Freight data found these companies moving into Mexico or bolstering their operations account for \$106 billion and 235,000 in new direct employments over the next few years. This marks a 21 percent increase in foreign direct investment from last year. [Read More](#)

Freight Rail Layoffs Renew Concerns About Safety and Service

The latest rail layoffs, combined with an investment fund’s ongoing campaign for control of Norfolk Southern, are renewing concerns among unions and regulators about the effects all the cuts might have on safety and service. The worries about the lean operating model the major freight railroads have embraced for several years as they cut roughly one-third of their workforce are not new. It relies on fewer, longer trains that require fewer locomotives, workers, and railcars. The railroads have defended their approach as a sound strategy to make the most of their resources without jeopardizing safety. But the industry has acknowledged that service suffered particularly in 2022 after the railroads cut too deep during the pandemic. All the major freight railroads — and the Ancora Holdings investors targeting Norfolk Southern — have repeatedly stressed they are committed to improving safety, especially after last year’s disastrous derailment in East Palestine, Ohio. Efforts to impose new safety rules on the industry have largely stalled since that crash, though the industry has taken several steps on its own, like installing hundreds more trackside detectors to help spot mechanical problems. But the chairman of the Surface Transportation Board, Martin Oberman, told an industry gathering that he believes Wall Street’s focus on boosting short-term profits, stock buybacks, and dividends undermines safety and service. [Read More](#)

Ryder System Sets Sights on Growing Cross-Border Business

Ryder System has opened a new warehouse in Laredo, Texas, and expanded its drayage yard in Nuevo Laredo, Mexico, with the goal of securing more cross-border freight, the company announced in February. The logistics and transportation services company estimates it manages 250,000 freight movements annually across the Mexican border, with about 85 percent of that volume coming through Laredo, according to Ryder Mexico VP of Supply Chain Operations Ricardo Alvarez. Ryder has provided cross-border shipping services for nearly three decades, but the growing trend of nearshoring production in Mexico has fueled a frenzy among carriers seeking to capture market share of the growing cross-border shipping business. Ryder is also monitoring nearshoring activity at the El Paso-Ciudad Juárez border as well as the Tijuana-San Diego border for future opportunities. “We will continue to explore investing in other U.S.-Mexico trade ports where we see similar needs and opportunities and where our customers need support,” Alvarez said. [Read More](#) [Read Ryder Press Release](#)

Logistics Rents See 6 Percent Increase in 2023, Reports Prologis

Rents paid for logistics properties saw solid gains in 2023, according to the Logistics Rent Index, which was recently issued by San Francisco-based real estate investment trust company Prologis. This annual report examines net effective rental growth trends in logistics real estate across markets in North America, Europe, Asia, and Latin America, according to Prologis. Prologis found that rent growth for global logistics real estate rose 6 percent annually in 2023, following a record 30 percent gain in 2022, which the firm said “[underscores] the resilience of logistics real estate fundamentals,” adding that nearly all global markets saw positive rent growth amid positive demand, low vacancy, and the need to evolve supply chains as they respond to things like changing customer expectations, operational challenges, and persistent disruption. On a global basis, Latin America saw rents increase the most in 2023, paced by Mexico’s 19 percent gain, and Prologis explained that a surge in demand in Mexico due to nearshoring drove down its vacancy rate from a long-term average of 7 percent to roughly 1 percent in the country’s six main markets going back to 2021. [Read More](#)

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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.
