EMPLOYEE MISCLASSIFICATION

New Doctrines In The Age of Dynamex

ABSTRACT

The Mortgage Field Services Industry Recalcitrant Position Addressing The Regulatory Impact Upon Its Servicers

D. Paul Williams

IAFST Press Secretary

Overview

Since 2012, the Mortgage Field Services Industry has known about the liability associated with its common practices with which they have classified independent contractors[1]. In fact, Buczek Enterprises paid Brad Hurst "six figures" to bring an end to the challenge that Hurst was, in fact, a misclassified employee. And over the past eight years, *tens of millions of dollars* have been expended upon a failed policy of saddling Labor with the liability by and through spurious language contained within Master Services Agreements (MSA). To date, the National Association of Mortgage Field Services[2] (NAMFS) has been the only trade association within the Industry space. And in each case brought forth claiming misclassification of employees, it has been against a NAMFS member. Additionally, each case has prevailed. In addition to the costly toll of litigation which could have been preempted, state regulatory agencies are now entering the arena carving out a king's ransom relying upon both state and federal rulings which are now, the law of the land.

This White Paper is intended to discuss the recent wave of successful litigation against NAMFS members and the Industry and additionally offer alternatives to a completely W2, employee-based environment.

Background

Recent rulings emanating from the California Supreme Court as well as US District Courts in California impacting the Mortgage Field Services Industry motivated the International Association of Field Service Technicians[3] (IAFST) to Charter this White Paper. After studying information from the California Employment Development Department (EDD)[4] and their unilateral issuance of millions of dollars in fines upon Prime Vendors within the Industry, the IAFST has begun a comprehensive assessment of the Misclassification of Employees litigation currently underway. The recent *Dynamex*[5] ruling from the California Supreme Court and the landmark federal

[1] https://www.pacermonitor.com/public/case/550264/Hurst_v_Buczek_Enterprises,_LLC_
[2] https://www.namfs.org/
[3] https://www.iafst.org/
[4] Multi-million dollar fines have been assessed by the CA EDD upon multiple NAMFS members by and through the audit process.
[5] Dynamex Operations West, Inc. v. Superior Court of Los Angeles. In a voluminous, 82-page decision, the California Supreme Court reinterpreted and ultimately rejected the Borello test for determining whether workers should be classified as either employees or independent contractors for the purposes of the wage orders adopted by California's Industrial Welfare Commission ("IWC") in favor of a worker-friendly standard that may upend the existing independent contractor labor market. In particular, the Court embraced a standard presuming that all workers are employees instead of contractors, and placed the burden on any entity classifying an individual as an independent contractor of establishing that such classification is proper under the newly adopted "ABC test"

decisions in both the *Vinson* Settlement[6] and *Bowerman*[7] jury verdicts, make Employee Misclassification the *single most important* legislative matter impacting the Industry today. In addition to the millions of dollars in federal jury verdicts handed down against Assurant Field Asset Services (AFAS), formerly Field Asset Services (FAS), Mortgage Contracting Services (MCS) has entered into a multi-million dollar settlements attempting to avoid addressing the issue. In fact, MCS amended their MSA to simply demand that Labor could, never again, file class action suit. All told, the first round of financial ramifications with respect to Employee Misclassification are currently estimated to be at nearly $25 Million. That number is anticipated to climb, with respect to California, to well over $50 Million. Nationally, we place the *conservative estimate* at well over $100 Million.

> *Whether or not California's application of its trifecta targeting of Industry Prime Vendors will be successful is a foregone conclusion. The EDD has already begun a specific and targeted auditing process targeting specifically National Association of Mortgage Field Services (NAMFS) members.*

And because of California's recently accelerated auditing by the California EDD of the Industry draws its legal genesis from Massachusetts, it is safe to say that virtually all Blue States will adopt what is commonly referred to as the ABC Test[8] when it comes to determining cases involving Misclassification of Employees. First, what is the ABC Test?

> *(A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; and*
>
> *(B) that the worker performs work that is outside the usual course of the hiring entity's business; and*
>
> *(C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.*[9]

The Court was very specific when it described the Dynamex business model. One could almost remove the name Dynamex and insert any Mortgage Field Services Industry company name and have an identical interpretation. Here is how the California Supreme Court put it,

> In the present case, Dynamex's entire business is that of a delivery service. Unlike other types of businesses in which the delivery of a product may or may not be viewed as within

[6] Bennett Vinson v. Asset Management Specialists Inc et al., No. 5:2014cv00369.
[7] Bowerman et al v. Field Asset Services, Inc., No. 3:2013cv00057
[8] One third of the US utilizes the ABC Test according to RandstadUS.
[9] See Mass.G.L., ch. 149, § 148B; see also Del.Code Ann., tit. 19, §§ 3501(a)(7)

> the usual course of the hiring company's business,34 here the hiring entity is a delivery company and the question whether the work performed by the delivery drivers within the certified class is outside the usual course of its business is clearly amenable to determination on a class basis. As a general matter, Dynamex obtains the customers for its deliveries, sets the rate that the customers will be charged, notifies the drivers where to pick up and deliver the packages, tracks the packages, and requires the drivers to utilize its tracking and recordkeeping system. As such, there is a sufficient commonality of interest regarding whether the work performed by the certified class of drivers who pick up and deliver packages and documents from and to Dynamex customers on an ongoing basis is outside the usual course of Dynamex's business to permit that question to be resolved on a class basis. Because each part of the ABC test may be independently determinative of the employee or independent contractor question, our conclusion that there is a sufficient commonality of interest under part B of the ABC test is sufficient to support the trial court's class certification order.[10]

Adding fuel to the fire, a Fair Labor Standards Act (FLSA)[11] suit was filed on 18 May 2018 in the United States District Court for the Southern District of Georgia[12]. Plaintiff's attorney Michele R. Fisher of Nichols Kaster, PLLP explained, "Companies cannot avoid overtime and minimum wage requirements simply by requiring their workers to label themselves as 'independent contractors.' When companies control their workers like employees, rather than giving them the independence of individuals in business for themselves, they must comply with wage and hour laws." The suit claims unpaid overtime and minimum wages due to Inspectors performing inspections upon defaulted assets within the Industry. [13] Not only is the FLSA Collective Action unique, the fact that it separately addresses Inspectors as a class is most assuredly novel. The fact that this litigation could easily apply against any Industry firm *is not* novel.[14]

Addressing Employee Misclassification

The challenge to addressing employee misclassification is that no one in the Industry, other than Labor, has a vested interest in doing such. In fact, there has been a calculated and identical response to this type of litigation in the past --- circle the wagons and add legalese to the MSA.

[10] In United States v. Silk, supra, 331 U.S. 704, for example, the United States Supreme Court divided 5-4 on the question whether truck drivers who delivered coal for a coal company should properly be considered independent contractors or employees.

[11] Fair Labor Standards Act of 1938 29 U.S.C. § 203

[12] Elinknan v. RP Field Services, LLC and National Creditors Connection, Inc., Case No. 4:18-cv-00108 (Southern District of Georgia).

[13] http://www.digitaljournal.com/pr/3780337#ixzz5Fz0C8aVC

[14] Contractor requirements of dress code, utilization of proprietary software, mandatory use of bidding software, date – time – place restrictions, etc. are nearly identical with respect to the language used by all Industry firms.

THERE ARE THREE TESTS THAT ARE COMMONLY USED by government agencies in determining worker status: the Common Law Test, the Economic Reality Test and the ABC Test. The most important test is the Common Law Test. It is a 20-factor test used primarily by the IRS to establish whether an individual is an employee for federal employment tax purposes. Businesses should pay particular attention to this test because the IRS is the federal agency most likely to investigate a classification problem. A failure to correctly classify a worker under the IRS test often draws the attention of other government agencies that may begin their own investigations and impose their own penalties for any misclassification. Therefore, every business must first examine whether the classification system they are using satisfies the federal requirements under the Common Law Test. Unfortunately, you cannot presume that a worker who satisfies the Common Law Test for independent contractor status will be automatically considered an independent contractor for all other governmental purposes. A thorough federal analysis should also include the Economic Reality Test to satisfy the obligations imposed by DOL. After the federal analysis, a business owner should then consider whether the individual state where the business is located may utilize either of the additional tests or use state-specific criteria in the classification process. For example, determining obligations under state workers' compensation and state unemployment tax programs may require the use of a different test. It is common for the states to use the Economic Reality Test, the ABC Test, or some other state-specific test. It is strongly recommended that employers using workers they intend to classify as independent contractors make sure that both the Common Law Test and Economic Reality Test are met. Contact the appropriate state authority, your attorney or accountant to see which test applies in your case.[15]

Under the Common Law test, which the Internal Revenue Service (IRS) relies upon, it would be hard to determine that there are any independent contractors in the Industry. For example,[16]

INSTRUCTIONS

a. **Employee**: provided with instructions from the business regarding when, where and how to perform the work.

b. **Independent Contractor**: decides when, where and how to accomplish the services he or she is providing.

TRAINING

[15] https://www.nfib.com/Portals/0/PDF/AllUsers/legal/guides/independent-contractors-guide-nfib.pdf
[16] See Footnote 10.

a. Employee: receives training directly from the employer, demonstrating that the business wants the services performed in a particular manner.

b. Independent Contractor: receives little or no training from the business, but rather, hiring is based on pre-existing proficiency or expertise in a particular line of work.

INTEGRATION OF THE WORKER'S SERVICES

a. **Employee**: services are integrated into the daily success and operation of the business.

b. **Independent Contractor**: services provided do not substantially affect the overall success of the business.

ORAL OR WRITTEN REPORTS

a. **Employee**: submits regular reports to the employer for whom the services are being performed.

b. **Independent Contractor**: accountable for end results only and not necessarily required to provide regular reports.

Is it possible to have identically situated independent contractors viewed as employees in different jurisdictions? In my opinion, yes. And much of the reason has less to do with legislative intent as it does with political reality. Let's look at the latter first. Bloomberg had this to say[17] about President Trump's 2018 Tax Bill Overhaul,

> It's an unhappy time to be a high-income professional in a blue state -- or their governor. The new tax law, which caps the deduction for state and local taxes at $10,000, amounts to a roughly one-third increase in their effective state-and-local tax rate. That will be an ugly hit to the pocketbook.
>
> > They will fiercely resist any attempt to raise taxes further, bad news for mayors and governors who are often facing big pension holes that are eventually going to need to be filled with taxpayer money. Worse still, they will probably put pressure on said politicians to lower taxes. And some of them may start shopping for residences in lower-tax locales, taking their valuable, taxable incomes with them if they go.

[17] https://www.bloomberg.com/view/articles/2018-01-26/sorry-blue-states-you-can-t-fix-the-tax-bill

State regulatory agencies are scrambling to make up for the tremendous loss in revenue as a direct result of the largest exodus from Blue States by individuals and businesses since, perhaps, the Civil War. That loss is from a combination of the Blue Exodus as well as the new Trump Tax Overhaul.

> Since Gov. Brown was sworn in, becoming the oldest governor in state history, 243,099 people have fled California on net for other states, taking $7.794 billion with them to states that don't have such high taxes and onerous regulations that make housing unaffordable for middle class households. The top recipients of Golden State refugees last year were Texas and Nevada, two states that have zero income tax. California, meanwhile, levies the highest top marginal income tax rate in the nation. Policy, like elections, has consequences.[18]

Revenue, alone, is not the sole determining factor when searching for the *why* with respect to the recent onslaught of California regulatory audits. For years, California has been incensed by the lack of responsibility shouldered by financial institutions when it came to the 2008 Housing Crisis which swept across the globe.

> Yet if Wall Street was the eye of the financial hurricane of the last decade, then California was the equivalent of the tropical oceans that provide the heat to feed such raging storms. More than any other place, California was the source of mass mortgage lending, ballooning home values, and dubious subprime operations. And behind that was California's leading role in U.S. urban, industrial and fiscal developments that underlay the stresses and strains on the financial system. California needs to be recognized as a pivotal site of the bubble of the 2000s, the bursting of the financial markets, and the Great Recession that followed. Four propositions, each corresponding to a particular facet of the crisis, support the idea that California has been one of the wellsprings of the false boom and that the state is bearing a disproportionate brunt of the fallout.
>
> > First, California has long been the biggest player in U.S. mortgage markets, and its banks engaged in some of the worst excesses of the housing bubble. Second, California boasts the largest housing sector among the fifty states and its housing is the most unaffordable – making borrowers more vulnerable and susceptible to mortgage overreach. Third, the state is the country's largest sub-economy, accounting for roughly 13% of national output, and has long been at the forefront of industrial change, technological innovation, and globalization, but it also manifests some of the most troubling elements of industrial decline of the United

[18] https://www.forbes.com/sites/patrickgleason/2017/12/23/mass-exodus-from-states-run-by-democratic-machines-continues/#2959e2b36d6a

> States. Fourth, it has the largest state and local government budgets in the country and has suffered the worst fiscal crisis of any state.[19]

Taking a parallel from the 2008 Housing Crisis, the entire house of cards which the Industry is built rests firmly upon the foundation that all its physical labor performed upon client assets occurs with independent contractors. This is a fallacy. This precarious foundation; this concept that an MSA makes the independent contractor, has eroded to the point of permanent instability. Moreover, though, this false belief leaves ripe the justiciability against the soft and unprotected underbelly of the financial institutions and government sponsored enterprises (GSE). It does not take a rocket scientist to realize that a state regulator, wielding the power of numerous judicial rulings and the mantle of the state, may easily extract allocutions in exchange for reduction in fines. And make no mistake whatsoever vicarious liability applies.

The National Association of Realtors ® (NAR) is probably the best example of a similarly situated Industry wherein employee misclassification has become the elephant in the room. And contrary to misguided public consensus, Realtors® are not necessarily independent contractors. *Bararsani v. Coldwell Banker Residential Brokerage Company* is a prime example. On November 15, 2012, plaintiff Ali Bararsani filed a putative class action complaint in Los Angeles Superior Court, California, against Coldwell Banker Residential Brokerage Company (CBRBC) alleging that CBRBC had misclassified current and former affiliated sales associates as independent contractors when they were, in fact, employees. The complaint, as amended, further alleges that, because of the misclassification, CBRBC has violated several sections of the California Labor Code including Section 2802 for failing to reimburse plaintiff and the purported class for business related expenses and Section 226 for failing to keep proper records. The amended complaint also asserts a Section 17200 Unfair Business Practices claim for misclassifying the sales associates. The Plaintiff, on behalf of a purported class, seeks the benefit of the California labor laws for expenses, wages and other sums, plus asserted penalties, attorneys' fees and interest.[20] CBRBC chose to pay out $4.5 Million to settle the action.

> The independent contractor relationship between brokers and their salespeople is a longstanding tradition in the real estate industry. NAR supports the protection of, and efforts to further secure, the right of brokers to choose whether to classify their real estate salespeople as employees or as independent contractors. As a means of achieving protection of this practice, NAR encourages states to review their existing labor and employment statutes, along with their real estate statute, and determine if those laws sufficiently secure brokers' ability to classify real estate agents as independent contractors. In some states, it may be appropriate to urge legislatures to make a direct

[19] http://geog.berkeley.edu/PeopleHistory/faculty/R_Walker/Walker_93.pdf
[20] https://www.sec.gov/Archives/edgar/data/1355001/000139898713000197/R16.htm

and unequivocal carve out for the treatment of real estate salespeople as independent contractors. This will help solidify the status of real estate salespeople as independent contractors and avoid future litigation challenging this practice. As discussed, many states, along with the federal government, already recognize real estate salespeople as nonemployees, but in light of the recent litigation regarding this matter, NAR and its membership are taking proactive measures to gain m clarity of a real estate broker's ability to classify real estate salespeople as independent contractors.[21]

The problem we are seeing, time and again, is that the Industry, including all of its intricately interwoven provider satellites, is refusing to bring the matter to a conclusion. As you will read from Robert Hahn, Managing Partner of 7DS Associates, and the purveyor of The Notorious R.O.B. website, had this to say with respect to several topics,

Misclassification Is A Big Deal

Entities that misclassify individuals are in many cases committing insurance fraud and deprive individuals of the many protections and benefits, both public and private, that employees enjoy. Misclassified individuals are often left without unemployment insurance and workers' compensation benefits. In addition, misclassified individuals do not have access to employer-provided health care and may be paid reduced wages or cash as wage payments.[22]

MELA and the [AFL – CIO] then quotes from Governor Deval Patrick's Executive Order setting up a task force to deal with employee misclassification:

[T]he practice of employee misclassification: (1) exploits vulnerable workers and deprives them of legal benefits and protections; (2) gives unlawful businesses an unfair competitive advantage over lawful businesses by illegally driving down violators' taxes, wages, and other overhead costs; (3) defrauds the government of substantial tax revenues; and (4) harms consumers who suffer at the hands of unlicensed businesses that fail to maintain minimum levels of skills and knowledge.

Like I said, we'll come back to this but note the enormous government interest here: unemployment insurance, worker's compensation, health care, and taxes. And taxes. Have I mentioned taxes?

Next, the unions argue that the fact that the real estate industry has traditionally classified agents as independent contractors for over a hundred years is irrelevant. In fact, they

[21] https://www.nar.realtor/law-and-ethics/independent-contractor-status-in-real-estate-2015-white-paper
[22] Citing Page 4 of the AFL – CIO Amicus Brief in *Monell v. Boston Pads*

argue that it is precisely those industries that have such practices that should be especially targeted by the general independent contractor law:

> All industries are affected when a new statute governing the treatment of workers is enacted. If those industries have a custom of violating the law, then naturally they will be more greatly affected. However, that is no reason not to enforce the statute against them. To the contrary, to effectuate the public policy underlying the Independent Contractor Statute — "to protect employees from being deprived of the benefits enjoyed by employees through their misclassification as independent contractors," Somers, 454 Mass. at 592 — courts must apply the statute to industries that have traditionally violated it.

Hahn makes an extremely important statement, "Notably, real estate agents are not specifically exempt from coverage under the most important federal law related to the payment of wages, the FLSA." FLSA Collective Actions are powerful and distinctly separate from Rule 23 Class Action certifications. FLSA makes mandatory individual employees to affirmatively consent in writing to becoming a party to a collective action under the FLSA. An individual, who does not consent to join the collective action, neither benefits from nor is bound by the judgment in the lawsuit.[23]

With respect to *Monell*, the Court was quite clear that determination of whether Realtors® are misclassified employees is a fight for another day. In discussing whether or not Field Service Technicians, Inspectors, and Remote Processors are misclassified employees, it is a foregone conclusion.

> "We take no position on whether the plaintiffs in fact are employees or independent contractors, or on how, in the absence of the framework established by the independent contractor statute, it may be determined whether a real estate salesperson is properly classified as an independent contractor or employee," the SJC wrote. "In light of the potential impact of that issue on the real estate industry as a whole and its significant ramifications for real estate salespersons' access to the rights and benefits of employment, we think it prudent to leave that issue's resolution to another day, when it has been fully briefed and argued," the SJC wrote in its decision.[24]

The question which presents is not whether the business model currently exhibited by the Industry guarantees employee status, but to what extent it does such. I belabored discussions with respect to the status of the Realtor® to demonstrate that perceptions are dangerous. Even the NAR agrees with the tenuous position they find themselves vis-à-vis uncharted waters in an

[23] http://www.bricker.com/insights-resources/publications/an-overview-of-the-flsa-collective-action
[24] https://www.bizjournals.com/boston/real_estate/2015/06/sjc-kick-s-the-can-on-whether-real-estate-agents.html

unfunded regulatory landscape. This is important. For the AFL – CIO to file an Amicus Brief means that they are hunting for bear. And to that point, if they are going after Realtors® you may guarantee that our Industry's spats are high up on their radar!

The Cost of FLSA Litigation and the Carte Blanche Attached to Rulings

FLSA settlements cost employers $403,950,000 in 2016 according to Myranda Mondry, a writer for T Sheets by quickbooks.[25] And year over year, financial institutions have been hit more and more. The sacrosanct belief that Realtors® and Bankers always have and will continue to be exempted from the Rule of Law is proving to be yet another precarious house of cards upon which this Industry relies. Norms which both legislatures and the judiciary have followed for decades are now being overturned. Bank of America (BANA) and Merrill Lynch ponied up $14 million to settle two FLSA claims in 2016.[26] In January 2018, the beleaguered Wells Fargo just entered into a $13 million settlement in California to address claims from Customer Sales and Service Representative ("CSSR"), Personal Banker 1, Personal Banker 2, and/or Business Banking Specialist.[27][28] In April 2017, Sommers Schwartz secured a $6.55 million settlement on behalf of approximately 28,000 current and former exotic dancers working at 64 nightclubs across the country operated by Déjà Vu Consulting Inc. The wage and hour class action lawsuit claimed the dancers were intentionally misclassified as independent contractors, rather than employees, so that Déjà Vu could avoid paying them minimum wage, a violation of the Fair Labor Standards Act (FLSA) as well as many state labor laws.[29]

Safe Harbor

There is no I in WE and there is no ME in TEAM. Period. And while many are talking about yesterday's US Supreme Court ruling in the *Epic Systems Corp* case, tragically, it really has no bearing upon most of the litigation impacting our Industry. The core issue facing Clients, Vendors,

[25] https://blog.tsheets.com/2016/business-help/most-expensive-flsa-overtime-lawsuits-2016
[26] https://www.law360.com/articles/793537/bofa-merrill-lynch-win-judge-s-ok-of-14m-deal-in-ot-suits
[27] Between 2010 and 2013, three cases were filed against Wells Fargo on behalf of current and former employees who worked as CSSRs, Personal Banker 1s, Personal Banker 2s, and/or Business Banking Specialists for Wells Fargo in California at any time period from August 21, 2008, to the present. These employees are referred to in this Notice as the "Class Members." Those cases include the following: (1) Ramirez, et al. v. Wells Fargo Bank, N.A., Alameda County Superior Court Case No. RG10496146; (2) Hanesoghlyan, et al. v. Wells Fargo Bank, N.A., Los Angeles County Superior Court Case No. BC470634; and (3) Richard v. Wells Fargo Bank, N.A., Alameda County Superior Court Case No. RG13690969. These cases were coordinated in Alameda County Superior Court as Wells Fargo Wage and Hour Cases, Case No. JCCP 4821 (the "Action"). The case is currently assigned to the Hon. George C. Hernandez, Jr., in the Alameda County Superior Court.
[28] http://wfwageandhoursettlement.com/Home/portalid/0
[29] https://www.sommerspc.com/blog/2017/04/6-5-million-wage-and-hour-settlement-for-deja-vus-exotic-dancers/

and Labor, is the Misclassification of Employees. To the point of *Epic Systems Corp*, though, here is a snippet,

> With today's US Supreme Court ruling in *EPIC SYSTEMS CORP. v. LEWIS CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*,[30] which consolidated three separate, yet similarly situated appeals in *Epic Systems Corp v. Lewis, Ernst & Young v. Morris and National Labor Relations Board v. Murphy Oil USA*, many viewed the requirements of abiding by mandatory arbitration provisions and denial of class action proceedings to be a victory. I do not. In fact, the *Epic Systems Corp* ruling more dealt with employees already pre-defined. It has little if no bearing upon whether a class is *willfully misclassified*.

Recommendations

As an Association, we must realize that our Membership is a mélange of trades. We represent both Labor and Management with respect to the Mortgage Field Services Industry. This is not simply those performing services in the field or those issuing the work orders. The IAFST represents individuals whom are processing the work orders, as well. We represent the distributors whom provide the materials and peripheral services required to service the asset. And we represent Realtors® as well as their Clients whom function within the distressed assets landscape.

The IAFST is now directly involved with a plethora of legislative agendas with only razor thin differentiations. To address the regulatory onslaught will require daring, originality, and a war chest. It will require solutions. I want you to think about that for a moment. **SOLUTIONS**. The California EDD was specific on something that I am not sure anyone really caught on to. They said that unskilled labor will be considered as fair game to quantify as employees. I am all for that. Why? Because we, as an Industry, need to be getting involved in training. NAMFS has an educational program. It won't pass muster and it is targeted towards Management, but at least they have one. The IAFST has one, as well, and it *does pass muster*. It is built upon a digitally accredited certification system. That is what regulators are looking for. Regulators want to be able to track certifications like they do in any other Industry --- except ours! The IAFST University[31] is built upon Amazon EC2 servers. It passes muster when it comes to GDPR Compliance[32] which became *mandatory* on 25 May 2018. No one in the Industry is GDPR Compliant.

[30] https://www.supremecourt.gov/opinions/17pdf/16-285_q8l1.pdf
[31] https://university.iafst.org/
[32] https://www.theverge.com/2018/5/22/17378688/gdpr-general-data-protection-regulation-eu

IAFST University is built, from the ground up, starting with Field Service Technicians (FST). The FST is at the core of both P&L as well as regulatory compliance. And IAFST University is a multi-tiered, module-based training system. Any firm out there currently training their personnel **IN ANY WAY WHATSOEVER** are guilty of misclassifying employees.

We are recommending that the onboarding of all personnel begin with a DUNS[33] and SAM Account.[34] This, in combination with third party verification systems and the assignment of educational modules, has thus far proven to appease the regulators I have spoken with, thus far, on both coasts. It doesn't end there, though. We need to be actively engaged in the legislative process. For an Industry which has brought in hundreds of billions of dollars over the past two decades alone, I am appalled by the fact that there is absolutely no lobbying ongoing. Perhaps many may consider the now deceased Robert Klein's attempt to lobby on behalf of his polycarbonate product in conflict with my statement; however, that is a personal product and singular in impact. The reality is the IAFST needs to be at the forefront of identifying issues and bringing solutions to them with respect to legislative agendas. Moreover, though, we need to be actively engaging upon the optics. In a hyperventilating, ever vacillating 24/7 news cycle, we need to be the entity to whom is looked upon for statements and answers.

A final component to this is the simple and salient fact that software plays a key and critical role in both compliance and the ability to repackage and redistribute information. I make no excuses about the horrific state of the Industry's technological infrastructure. There is not a single Industry system which is HTML 5 compliant nor a single system which could not be accessed within minutes. I demonstrated this, multiple times. This is not about finger pointing; this is about moving forward with technologies such as the Enterprise Vendor Management Platform (EVMP)[35], which is light years ahead of anything currently used, as well as decentralizing command and control over background checks by and through only two firms in the Industry. In fact, if Contractors have a SAM Account, they --- and wait for it as this is crucial --- their business has not only been background checked, they are proven to be independent contractors.

Conclusion

The end result of not addressing employee misclassification will be a veritable onslaught of litigation from every corner of the Industry. The litigation will be protracted, costly, and duplicitous. Moreover, though, left unchecked, we will see an eventual unionization of the Industry as the AFL – CIO has already begun nipping at the heels of the NAR. Let that sink in, for just a moment. If the AFL – CIO took on the NAR whose budget, lobbying efforts, and statutory

[33] https://fedgov.dnb.com/webform
[34] https://www.sam.gov/portal/SAM/
[35] https://foreclosurepedia.org/enterprise-vendor-management-platform/

backing dwarf the entire combined total revenue within the Mortgage Field Services Industry, they are already looking to make waves here. The IAFST must lead the charge; however, that charge must be well thought out and researched. We must assemble allies and resources from all quarters in order to effectively address these issues. Regardless, there will be certain states where once former independent contractors are now misclassified employees. And to that point, the IAFST must stand at the ready to capitalize upon those individuals whether it be through the National Labor Relations Board (NLRB) or through other mechanisms. The more daunting of the challenge is not so much implementing a legal strategy to come into compliance, but rather the looming necessitation to ensure that all Vendors are legally operating within the Industry.