

# WOLFE LAW GROUP

MIND OF A LAWYER. HEART OF A CONTRACTOR.

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<http://www.constructionlawmonitor.com/?p=2356>

## **Is The Nailed! Blog "Nailing" Companies Before A Fair Investigation?**

A couple of weeks ago, we posted about a new blog out in the blogosphere that is of interest to the Washington construction industry: [Nailed!](#)

The blog, published by Washington's Department of Labor and Industries through Carl Hammersburg, the department's Fraud Prevention and Compliance manager, focuses on fraud prevention and compliance with L&I regulations.

It's not shy about it's goal. The blog is called "Nailed," and it's sending a message to its regulated industries that it will be nailing those not in compliance.

While I generally like the blog and its content (and sometimes share it on [my Twitter account](#)), I was a bit upset by an October 25th post: [Tragedy reveals hidden cost of independent contractor label](#).

The post discusses a very hot topic: the distinction between independent contractors and employees. I'll be the first to tell you that the independent contractor label is often abused, with companies - big and small - holding benefits from its employees by labeling them an "independent contractor." Just because you call someone an independent contractor, doesn't make it so.

So, the blog post uses a recent tragedy to "reveal the hidden cost" of improperly using the independent contractor label.

According to the post, a Burien two truck driver lost his life in an accident, and his family contacted L&I requesting death benefits. According to L&I:

That's when we discovered his employer had not paid for the insurance that would entitle his family to death benefits.

The owner of the tow truck company claims the victim was an independent contractor, not an employee. Even though the man was insured by the company and drove company-owned trucks, the owner insists the man killed met the guidelines to qualify him as an independent contractor.

So, what will come next in the story? Sounds to me like L&I is going to explain how they investigated the incident and discovered that the tow truck company violated regulations and misclassified the deceased man as an independent contractor.

But no, the post goes on to say this: "*We're opening a review* of this incident...to determine if these claims hold water..."

Wait! They didn't already investigate this? From the setup of this blog post - after all, look at its title, it seems like the department had already made up its mind about this. They haven't even investigated the incident yet!?

To highlight that apparent bias that L&I will have entering the investigation, I commented on the blog post with the following:

Hi Carl - Let me start by saying I'm a big fan of the Nailed Blog, and the concept behind it. I am a reader and subscriber, and frequently refer to it on our blog: <http://www.constructionlawmonitor.com>.

As an attorney who represents clients in the construction industry, we confront this "independent contractor v. employee" issue a lot. There is certainly a problem with the label being used incorrectly. I find that folks don't use it incorrectly on purpose...they just don't understand the distinction. After all, the distinction can get quite technical.

All that aside, I'm commenting because I didn't like this post. Let me explain.

In reading the first three paragraphs, I assumed that L&I had already opened an investigation and closed it: finding the towing company was in violation. But then I encountered the fourth paragraph: "*We're opening a review* of this incident..."

Wow! If this were any other blog, I wouldn't be caught off-guard by the commentary. But since Labor & Industries will be the government agency investigating this incident and the towing company's conduct, I was surprised that the agency would be starting the investigation with such bias.

This is unfortunate. There are circumstances where the independent contractor label would be appropriate, and maybe this is one of those circumstances and maybe its not. But I think Nailed! went a little too far with this post, as it seems like L&I made up its mind upon hearing the sad story...and not the facts.

It's unfortunate, but sometimes it seems like government agencies have an agenda of their own, and they plow through honest legal questions and determinations to advance their agenda.

I sympathize a great deal for the Burien man who lost his life, and for his family. And if the tow truck company was improperly classifying employees to save money, they should be *nailed*.

But we don't know that yet. It's too bad that the department with the first crack at making that determination seems to already have made up its mind.

#### **Articles About Classifying Employees / Contractors:**

- [Criminal Penalties For Misclassifying Independent Contractors?](#)  
(blogs.forbes.com)
- [CT State Dept. of Labor Investigating WWE's Use of Independent Contractors](#)  
(klqwrestling.com)
- [Employee or Independent Contractor: Watch Your Classifications](#)  
(entrepreneur.com)