



Employment Law Alert

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Uber Drivers in California May Proceed as a Class on Independent Contractor Claim

A federal judge in San Francisco has dealt a huge blow to Uber Technologies, Inc. by certifying a class of Uber drivers who claim the popular ride-hailing company misclassified them as independent contractors and unlawfully withheld tips. Although the order did not determine whether Uber drivers are actually employees, rather than independent contractors, it does mean that the lawsuit may proceed on a class-wide basis, dramatically increasing Uber's potential liability.

Uber will now have the burden of proving that its drivers are not employees. Under California law, the order explained, the most important consideration in determining whether an employment relationship exists is the alleged employer's right to control work details. The more control the alleged employer exerts over the person providing services, the more likely the person providing the services is an employee, not an independent contractor. While the right to control is the primary factor, there are several secondary factors relevant to this determination, making litigation of a misclassification claim a highly factual inquiry.

This class certification ruling is a microcosm for a larger battle that has been unfolding for years but recently reached new heights. California and federal laws are increasingly hostile to companies using contracted labor. Backed by union interests, politicians are even using this issue on the campaign trail to paint companies as uncaring and unconcerned with the economic interests of contracted workers.

Using outdated legal tests developed decades ago, these unfavorable rulings appear to threaten the core business models of ride-hailing companies like Uber, and other on-demand service providers in a new economy that relies heavily upon independent contractors. In light of this increased scrutiny of independent contractor arrangements, and the significant penalties and wages a company could owe if found by a court to be wrong, companies that utilize independent contractors should carefully consider whether they have properly classified them. If there is any uncertainty or concern, employers should reach out to counsel for guidance. The Employment Law Group at Payne & Fears LLP has the expertise and experience needed to help companies with these complex issues.

The Employment Law Group of Payne & Fears LLP specializes in representing local, regional and national employers in all aspects of labor and employment law and related civil litigation. Our major areas of expertise include employment discrimination and wrongful termination litigation, wage and hour counseling and litigation, union prevention and labor-management relations, protection of trade secrets, unfair competition litigation, consultation and advice on a broad range of personnel matters, and immigration advice.

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