

SIGN OF THE TIMES? NEW LAW PROTECTS FLORIDA COMPANIES FROM MISCLASSIFICATION CLAIMS WHEN AIDING GIG ECONOMY WORKERS IN EMERGENCIES

Insights
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The pandemic has taught employers that flexibility is key to survival – and thanks to a new law just signed into effect on May 11, Florida employers will not have to worry that any emergency actions they take to aid gig economy workers will be used against them in misclassification claims. Governor Ron DeSantis signed a bill that will take effect on July 1 and protect businesses that want to help gig-economy-like independent contractors during states of emergency from legal accusations that they have actually formed an improper employee-employer relationship. Not only will this new law provide much-needed assurance to Florida businesses and workers during the impending hurricane season and any further COVID-19 outbreaks, but it could provide a roadmap for other states looking to encourage flexibility (and compassion) among the business community. What do Florida businesses – and companies across the country looking to this new law with envy – need to know about this new law?

What Problem Does this New Law Solve?

[Senate Bill 542](#), sponsored by Senator Ana Maria Rodriguez (R-Doral), was passed with overwhelming bipartisan support by the Florida state legislature in March. It clarifies that any actions taken by businesses to provide emergency relief for gig economy workers will not destroy the independent contractor relationship, and they will remain shielded from misclassification claims.

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The pandemic demonstrated that situations could arise where well-intentioned businesses felt handcuffed from helping their independent contractors. The fear existed that providing emergency aid to gig workers could be used against them to prove a misclassification claim – that the workers should actually be categorized as employees.

Under current legal standards in place across the country, a more formal relationship between business and worker (evidenced by a closer relationship that you would typically see between company and contractor) could lead courts or government agencies to conclude that the worker should have been classified as an employee all along. Any lawsuit or government investigation to that end could lead a business to legal exposure leading to massive costs over overtime wages, workers' compensation benefits, employee benefits, to just name a few.

This fear prevented some businesses from providing masks, hand sanitizer, and other safety supplies to their independent contractors. They were worried that they would learn the hard way that no good deed goes unpunished. Thanks to SB 542, however, that fear will no longer exist for Florida businesses.

What Does the New Law Say?

The new law says that businesses can provide support to their gig workers during states of emergency without fear of a misclassification finding. Not only will this help during any further COVID-19 outbreaks or future pandemics, but it is particularly timely given the impending hurricane season.

Starting July 1, businesses can take the following four actions during declared emergencies without having to worry about a misclassification claim:

1. Provide financial assistance to previously “engaged individuals” who are unable to work because of health and safety concerns;
2. Directly provide benefits that are related to the health and safety of engaged individuals, including medical or cleaning supplies, personal protective equipment, health checks, or medical testing;
3. Provide training or information related to the health and safety of engaged individuals or the public; or

4. Take any action, including action required or suggested by any federal, state, or local law, ordinance, order, or directive which is intended to protect public health and safety.

Under the law, an “engaged individual” is anyone “who provides a good or service to a business or on behalf of a business and who is remunerated for the good or service, regardless of the individual’s classification as an employee or independent contractor.”

“Companies would be able to provide these types of items to their independent contractors without creating a situation where they would be violating any laws,” Rodriguez [told her fellow lawmakers](#) as they were preparing to approve the measure. Notably, the law will only assist employers in responding to the misclassification claims brought pursuant to Florida law.

What’s Next?

Businesses across the country should remain hopeful that other states will follow Florida’s lead to provide similar protections. For now, though, Florida businesses should rest easy knowing that their efforts to help gig economy workers during emergencies will not lead to adverse legal findings.

We will continue to monitor and report on any major developments on these issues, so make sure that you are subscribed to [Fisher Phillips’ Insights](#) to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney, the author of this Insight, any attorney in [our three Florida offices](#), or any attorney in our [Gig Economy Team](#).