



# Florida Court Rules Uber Drivers are Not Employees

Insights

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In a somewhat surprising but positive development for gig companies, a Florida state appellate court ruled on February 1, 2017 that Uber drivers are independent contractors, NOT employees, and therefore not entitled to unemployment compensation benefits when their working relationship with the car ride service terminates.

The unanimous decision by the three-member Florida 3rd District Court of Appeal in Miami affirmed an earlier decision by the state's Department of Economic Opportunity, which considers and rules on claims for unemployment compensation benefits filed by employees terminated, downsized, or laid off from their jobs.

The claimant, Darrin E. McGillis, executed an independent contractor agreement with Uber to work as a driver, providing transportation services to customers who contact the company through their online application, typically from a smart phone or tablet. But Uber cancelled McGillis' access to the Uber technology based on allegations he violated Uber's user privacy policy. Initially, the Florida Department of Revenue granted McGillis' claim for benefits, but Uber appealed. After an evidentiary hearing before a deputy hearing officer, the Department of Economic Opportunity ruled McGillis was an independent contractor, based upon the plain language of his Independent Contractor Agreement with Uber. Thereafter McGillis appealed. The appellate court found, in pertinent part:

"Uber and McGillis contractually agreed that McGillis' work did not make him an employee. A review of the parties' working relationship confirms this understanding. Due in large part to the transformative nature of the Internet and smart phones, Uber drivers like McGillis decide whether, when, where, with whom and how to provide rides using Uber's computer programs. This level of free agency is incompatible with the control to which a traditional employee is subject. Accordingly, we affirm the final order of the executive director of the Department of Economic Opportunity concluding that Uber drivers are not entitled to reemployment assistance under section 443.1216, and denying McGillis' claim for reemployment assistance."

The state Department of Economic Opportunity concluded its decision, which was accepted by the court, by saying: "Uber is no more an employer to drivers than is an art gallery to artists." This line may be destined to be repeated by other gig companies defending similar claims in the future.

Contrary to the Florida court's decision, courts in California (June 2015) and Great Britain (October

2016) and an administrative agency in Switzerland (January 5, 2017) have previously held that Uber drivers within their jurisdictions are employees, not contractors, regardless of the Independent Contractor Agreements they executed, and thus are entitled to the same workplace benefits as employees, such as health insurance, vacations, sick leave, overtime pay and retirement benefits. No doubt we have not heard the last in this battle, although the latest round is a complete victory for Uber – and gig companies everywhere.

### ***Related People***

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**Andrew Froman**  
Partner  
813.769.7505  
[Email](#)