



Is This Your New Roadmap To Misclassification Success? Maybe.

Insights

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This is a big deal. The 2nd Circuit Court of Appeals came down in favor of a sharing economy business in a misclassification case yesterday, ruling that a group of black-car drivers were independent contractors and not employees, therefore not entitled to overtime pay. My partner Michael Marra and I wrote an article about the decision, which you can find here.

There's good news and (slightly) bad news with the decision. The good news is that the court provided a bit of a roadmap for other businesses to follow when it comes to ensuring your classification is proper. The three-step plan includes:

- Ensuring your workers have “entrepreneurial opportunities” not available to employees, including the ability to work for direct competitors;
- Requiring your workers to make “a heavy investment” in their business through the purchase of something above negligible items; and
- Providing them with “a high level of flexibility” in their schedules, their ability to accept or reject work, their driving locations, etc.

The court found these things all demonstrated the drivers were contractors and not employees, and thus ineligible to collect wages under the Fair Labor Standards Act (FLSA). This was despite the fact that the drivers presented some evidence that showed “control” by the business over their typical workday, such as having to follow a set of rules in a rulebook, having to satisfy a dress code, working with set rates established by the company, and working through the company's dispatch system.

But there's the rub. The court was also quick to say that this decision was “narrow” given the totality of the circumstances involved in this specific case. “In a different case, and with a different record,” the court said, “an entity that exercised similar control over clients, fees, and rules enforcement in ways analogous to [the company] might well constitute an employer within the meaning of the FLSA.” So, in other words, just because you follow the court's roadmap doesn't necessarily mean you are assured a victory when it comes to misclassification.

The upshot: this roadmap might not necessarily get you to the promised land, but it'll get you in the right direction.

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