Texas Two-Step: Gig Businesses In The Lone Star State Get Two Pieces Of Good News

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Gig economy companies in Texas were on the receiving end of two pieces of good news in the last several weeks. Most recently, the state legislature passed and the governor signed into law a bill that will all but assure ride-sharing companies that their workers will be classified as independent contractors and not subject to costly misclassification cases. As my Dallas partner Art Lambert wrote in a legal alert from earlier this week, H.B. 100 ensures that any driver working for a transportation network company (TNC), defined as any entity using a digital network to connect a rider to a driver to provide prearranged rides, is properly classified as an independent contractor as long as four simple requirements are met:

1. The TNC cannot prescribe specific hours during which drivers should be logged into the digital network;
2. The TNC must permit drivers to work for other ride-sharing services;
3. The TNC must allow drivers to engage in any other occupation or business they desire; and
4. The TNC cannot limit the territory within which the driver may provide digitally prearranged rides.

Given that these are fairly standard elements applied to just about every gig relationship anyway, it will be quite easy for ride-sharing companies to avoid misclassification claims in the future. The new law is effective immediately, meaning ride-sharing businesses can enjoy this new paradigm today.

But what about other gig businesses doing business in Texas? A May 12 decision from the 5th Circuit Court of Appeals should put a smile on your face. Although the case did not directly involve a sharing economy company, the ruling could be to your benefit nonetheless. In *Davis v. Dynamic Offshore Resources, LLC*, the 5th Circuit Court of Appeals – hearing federal cases from Texas, Louisiana, and Mississippi – decided once again that businesses should not be held vicariously liable for the alleged negligence of its independent contractors. The case involved a crane mechanic employed by Gulf Crane Services who was allegedly injured during a personnel basket transfer to one of Dynamic's platforms. No Dynamic employees were present at the platform; instead, independent contractors employed the lead operator, the crane operator, and all other workers on the platform. Although the injured worker brought suit against Dynamic for negligence and gross negligence, the

lower court dismissed the case and the appeals court affirmed the dismissal. “It is well established that a principal is not liable for the activities of an independent contractor committed in the course of performing its duties under the contract,” said the court. Although the court said a principal company could be held liable for the acts of an independent contractor if it “exercises operational control over those acts or expressly or impliedly authorizes an unsafe practice,” it ruled that Dynamic did not have the duty to supervise the actions leading to the injury to ensure that its independent contractor performs its obligations in a reasonably safe manner.

This decision should help those gig companies in Texas (not to mention Louisiana and Mississippi) who face allegations that independent contractors operating on behalf of your business somehow cause them damage. So long as you don’t exercise operational control over the actions, or somehow authorize an unsafe practice, you should be in clear. Check with your local attorney in Texas (or Louisiana or Mississippi) if you want to ensure you are acting in compliance with this decision.

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