

Next Crack In The Wall: NY Uber Drivers Held To Be Employees

Insights

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Back in October, we reported that there appeared to be the first crack in the wall when it came to classifying Uber drivers as employees instead of independent contractors. At that time, it was reported that the New York State Department of Labor made the determination while granting the drivers unemployment benefits. We weren't sure how much of an impact these cases would have, however, and concluded by saying, "it's unclear how far worker advocates will push these decisions. If they do go to their next levels of review, it is possible for New York's appellate courts to be called upon to step into the fray."

Well, the next crack has now appeared in the wall. It wasn't the court of appeals, but an administrative law judge who agreed with the initial determination and on June 9 ruled that the three drivers were eligible to receive unemployment benefits. Again, the significance of this decision isn't really about the benefits themselves; the significance is the determination of employee status by yet another fact-finder. "The overriding evidence establishes that Uber exercised sufficient supervision, direction, and control over key aspects of the services rendered by claimants," wrote ALJ Michelle Burrowes, "such that an employer-employee relationship was created."

Also significant: the ALJ said the ruling didn't just apply to the three drivers at issue, but also to all "others similarly situated," who, in her opinion, are now deemed employees for unemployment purposes. It is not yet clear what is meant by that classification, as Uber claims that each driver's situation is unique and therefore not susceptible to a blanket determination. The company has asked for a rehearing, and no doubt the final determination will wind its way into the court system.

So far, government entities in New York and California are the only two to have found that Uber drivers are employees. The entire gig economy community hopes that these determinations spread no further.

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