# Latest Labor Board Decision A Step In The Right Direction, But Not A Magic Bullet

Insights
2.08.19

I recently wrote about the January 25 decision from the National Labor Relations Board that makes it easier for businesses to classify their workers as independent contractors (*SuperShuttle DFW, Inc.*). You can read the full article here. In a nutshell, now that the Board is comprised of Trump appointees and majority Republican, it reversed a 2014 Obama-era decision that claimed to have "refined" the independent contractor test, but in practical terms, had made it harder to classify workers as contractors. The *SuperShuttle* case overturned the 2014 case and returned to a more balanced standard, one that gives more of an equal weight to both the right-to-control aspects of the relationship and the role of the workers' entrepreneurship in operating their own businesses.

Any decision that provides more clarity for businesses when it comes to classification issues is a welcome one; it is especially welcome if the decision recognizes business practicalities and ensures that hiring entities can reasonably classify their workers as contractors without jumping through irrational hoops. For this reason, the recent decision should be accepted as a positive development.

But gig economy businesses shouldn't be popping any champagne corks. The decision is somewhat limited, and shouldn't cause you to change your business practices anytime soon. For one thing, the applicability of this decision is limited to matters before the NLRB; in other words, it will help you when it comes to potential unionization efforts (and perhaps unfair labor practice charges). But the decision does not alter federal or state wage and hour law, which is usually the vehicle by which most misclassification challenges are brought. Second, the decision mostly hinges upon the concept of entrepreneurial opportunity, and how it should be treated as a principle by which to evaluate the overall effect of the typical common law factors on a contractor's independence to pursue economic gain when examining a classification issue. That's because the case deals with a franchise operation that uses the name, logo, color scheme, and other proprietary mechanisms of the SuperShuttle brand, and whether the workers it retained—drivers who supplied their own shuttle vans and set their own schedules—were properly classified as contractors. Much of the reasoning behind the decision hones in on this business relationship: a franchisor lending its name and business apparatus to a franchisee, which then retains contract workers to carry out its work.

That's not the typical gig model. While there are some good nuggets to be gleaned from this decision—and again, a win is a win—this decision is not any sort of magic bullet that should have gig businesses dancing in the streets.

## *Related People*

**Richard R. Meneghello**
Chief Content Officer
503.205.8044
Email