Uber Court Victory A Win For Sharing Economy Companies Everywhere

Insights
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A California court quietly granted ride-sharing giant Uber a significant victory last week in the ongoing misclassification battle over whether its drivers are properly classified as independent contractors. Although this ruling received scant attention due to the procedural quirks surrounding the decision, its significance cannot be overstated. Sharing economy companies everywhere could – and should – cite this ruling if their classification structures are challenged by plaintiffs' attorneys or government agencies, but should also proactively apply the lessons taught by this case to reduce the chances of being caught in a misclassification trap to begin with.

Uber's Classification Structure Offers Maximum Flexibility

Unless you have been living under a rock for the past five years, you are probably familiar with the ride-sharing model offered by Uber and its competitors. Individuals sign up as drivers and are connected with passengers needing a ride. The drivers are classified as independent contractors because of the lack of control levied by Uber; indeed, the drivers own their own cars, choose when and when not to work, and have few of the trappings usually associated with the employee-employer relationship.

That has not stopped drivers from bringing lawsuits against the ride-sharing company seeking to be classified as employees. We have extensively covered the major milestones in the most significant of these lawsuits, from the initial $100 million agreement that appeared to resolve a massive class action case in April 2016, to the rejection of that settlement by a federal court judge in August 2016 who believed the resolution was not adequate, to the 9th Circuit ruling in September 2016 handing Uber a significant victory by upholding the company's arbitration agreements.

In early February 2017, the company received some good news when a Florida state appellate court ruled that drivers are independent contractors, not employees, and therefore not entitled to unemployment compensation benefits when their working relationship with the ride service terminates. However, the news had not been so good in California, where a 2015 court decision determined that drivers were employees entitled to certain benefits. The tide may have started to turn, however, with a February 21, 2017 ruling from the Los Angeles County Superior Court in a case that started with a hug between a driver and his passenger.

Driver Deactivated Due To Sexual Harassment Allegations Sought Employee Status

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Yosef Eisenberg was an Uber driver with a rollercoaster relationship with the company. He claims to have been deactivated from the ride-sharing service "more times than I can remember," but had always been invited to return after taking quality improvement courses to regain access to the Uber platform. Most of these deactivations were due to low rider ratings. However, at least once he was cut from the system for charging a customer a greater amount that he should have.

Eisenberg's biggest troubles, however, stemmed from his alleged inappropriate contact with customers. On one occasion, he was deactivated after asking riders for their telephone numbers, even though the company instructs drivers to only contact riders after a trip is completed if a personal item had been left in the car. The last straw occurred in July 2015 when he gave a hug to a female passenger. Eisenberg explained in vain that she was drunk and asked to sit in the front seat next to him. He said she wanted to "hang out with him" and that he only gave her a hug "to diffuse the situation" at the end of the ride. Uber learned of the situation and classified his behavior as sex harassment after an investigation, permanently deactivating his status as a driver.

Eisenberg brought a legal action against Uber in an effort to get his job back and to collect damages; his claim alleged he was an employee of the company and thus entitled to all of the protections and benefits afforded to employees in California. The claim went to an arbitration proceeding in July 2016 pursuant to the mandatory arbitration agreement signed by all drivers.

Uber's Legal Victory Affirmed By State Court

In November 2016, the arbitrator ruled in Uber's favor and rejected Eisenberg's claim in a thorough 50-page written decision. The arbitrator noted that most of the factors present demonstrate that Uber does not maintain the right to control its drivers, and thus has no employer-employee relationship with them. Some of the factors cited by the arbitrator as determinative included:

- Uber does not provide drivers with an employee manual or handbook.
- To the extent the company offers training to its drivers, it is modest and brief (focusing on how to use the app itself and offering several customer service tips).
- Uber requires drivers to provide their own cars.
- Drivers are responsible for paying for their own vehicle repairs, gas, and liability insurance.
- The company does not guarantee drivers any number of rides per day.
- Drivers are not required to provide a minimum amount of time spent online ready to offer rides to passengers.
- Drivers can offer services to competitors, and in fact can be available for both Uber and any number of competitors at the same time.

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- Uber offers no instructions to drivers on where to drive when they are on the app.
- Drivers establish their own schedules.
- There are no required start and stop times for drivers.
- Uber drivers can take as long as they want for breaks and meals.
- Uber does not require drivers to request permission to shut down the app and go offline.
- Drivers have no responsibility to tell Uber when they are going to be off the app.
- Uber does not supervise its drivers.
- Drivers do not have to wear any special uniform or signage.
- Although Uber proposes suggestions to drivers on how to provide the best customer service experience, such as offering complimentary refreshments and cell phone chargers, using the most efficient driving routes, and providing a clean car, these are not mandatory rules.

The combination of all of these factors led the arbitrator to conclude that Uber drivers were properly classified as independent contractors. "The fact, alone, that Uber has an active interest in deactivating certain drivers," he wrote, "does not establish an employer-employment relationship." He concluded by noting that businesses are "permitted to exercise a certain measure of control for a definite and restricted purpose without incurring the responsibilities" of becoming an employer. The question has always been how much control is too much control to tip the scales from contractor to employee status, but in this case, the arbitrator found the scales tipped in Uber's favor.

The arbitrator acknowledged that some factors exist that could arguably constitute a "right to control" between Uber and driver, but discounted them as not being significant enough to warrant a ruling in Eisenberg's favor. He cited, for instance, the fact that drivers must agree to the terms of an online services agreement before they have access to become a driver; Uber sets base or default fares that must be charged to passengers; drivers are discouraged from soliciting tips from passengers; Uber uses passenger ratings to evaluate drivers; and drivers can be deactivated for a variety of offenses (such as sex harassment or other inappropriate behavior, not to mention low passenger ratings).

On February 21, 2017, Los Angeles Superior Court Judge Michael J. Stern granted the arbitration award in favor of Uber, dismissing Eisenberg's claim. The decision did not garner significant attention due to the procedural path that this case needed to take, but that does not lessen its significance. Although Eisenberg might appeal the matter to the court of appeals, this victory was crucial for Uber and could set the tone for future success on the issue in California and elsewhere.

What Should Employers Do?

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What Should Employers Do?

Any employers concerned about misclassification – including shared economy or "gig" economy businesses – should pay close attention to this ruling and apply the lessons it teaches. Reviewing the factors cited by the arbitrator should assist in establishing preferred practices that will minimize the changes of a misclassification lawsuit and maximize the chances of success should such a lawsuit be filed against your business.

This is a rapidly evolving area of the law, and courts across the country to continue to grapple with complex issues. It is made especially difficult by the fact that courts are left to analyze these 21st century cases using 20th century law. To stay up to speed on the latest developments, we encourage you to regularly visit our Gig Economy Blog.

For more information, contact any member of our Gig Economy Practice Group, or your regular Fisher Phillips attorney.

This Legal Alert provides an overview of a specific legal decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

Related People

Karl R. Lindegren
Partner
949.851.2424
Email

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Richard R. Meneghello
Chief Content Officer
503.205.8044
Email

Industry Focus

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