Gig Economy Game-Changer? New Florida Law Ensures Contractor Status For Drivers

Insights
4.25.17

The state of Florida is about to enact first-of-its-kind legislation that will ensure most ride-sharing drivers are independent contractors and not employees, eliminating costly misclassification battles and providing a massive boost to the gig economy. After passing the state legislature last week, Governor Rick Scott tweeted yesterday that he intends to sign the bill into law when he returns from a foreign trade trip. Once it takes effect on July 1, 2017, Florida will offer unmatched protections to sharing economy companies that do business in the state, hopefully spurring other states to follow its lead.

Big For Gigs: Independent Contractor Status Assured

One of the main thrusts of the bill is to ensure the safety of those using ride-sharing services of "transportation network companies," or TNCs – defined as entities using a digital network to connect a rider to a driver to provide prearranged rides. It will require TNCs to carry a certain amount of insurance for injury or property damage for both drivers and riders. But for employment law purposes, the highlight of this new law is the classification assurance section.

Once effective, the law will ensure that TNC drivers are independent contractors and not employees as long as four simple requirements are met:

1. The TNC cannot unilaterally 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 and driver must agree in writing that the driver is an independent contractor.

These requirements are fairly typical for sharing economy companies, so it will not be difficult for most businesses to adapt to this provision of the law and gain the protections it will afford. The value of adopting these requirements to gain a defense from misclassification challenges cannot be overstated. Ride-sharing giants Uber and Lyft have both been caught up in multimillion dollar class action lawsuits from groups of drivers who allege they were actually employees and not contractors, seeking payment for alleged wage and hour violations and other benefits. And they aren't alone; many smaller entities have also been on the receiving end of such legal claims, hampering their

ability to grow in a competitive business environment. To be able to avoid the specter of such a claim will be a major coup for ride-sharing companies.

Further, the law ensures that local municipalities cannot do an end-around to bypass the state rules. According to the new law, TNCs and their drivers are governed exclusively by state law, and any local laws passed prior to July 1, 2017 will no longer be effective. This will prevent worker-friendly cities or counties from adding additional requirements or otherwise contravening the state law.

Ride-Sharing Companies Must Meet Other Requirements

Besides the insurance requirement, the new law will also require a few other responsibilities for ride-sharing companies. However, given the relatively light burden these requirements will add and the major benefit of the classification provision, most Florida companies should gladly accept these as part of an efficient compromise with the state.

Among the additional requirements:

- TNCs must enact a zero-tolerance policy when it comes to drug or alcohol use among its drivers, and if it receives a complaint alleging a violation of the policy, it must suspend the driver from using the digital platform until an investigation is conducted;

- TNCs must also adopt a nondiscrimination policy with respect to riders and potential riders (including following applicable laws regarding service animals), and are required to reevaluate any drivers who receive low quality ratings because of alleged violations of this policy;

- TNCs must conduct a national criminal background check and a driving history research report for each driver before permitting use of the digital platform and every three years thereafter, and are restricted from using drivers with certain infractions prescribed by the law;

- TNCs must provide riders with electronic receipts within a reasonable period after the end of a ride; and

- The fare, or the fare calculation method, must be communicated to the rider via website or app before the beginning of the prearranged ride.

What Does This Mean For Sharing Economy Companies?

This is undoubtedly good news for ride-sharing companies in Florida, who now will be provided much-needed certainty about how to avoid misclassification battles. But what about other sharing economy entities in Florida, and what about other gig economy companies throughout the country?

For now, such businesses can be envious of the position that Florida ride-sharing companies will soon enjoy. The next step, of course, is for this law to be expanded to other digital businesses in the state, and to be replicated by state legislatures across the country. Perhaps other statehouses will watch the impact that this law has before proceeding with their own versions of this law, ensuring it

brings a fair and equal balance between worker and company prior to taking the plunge themselves. If this truly is just the first of many dominoes to fall, we'll look upon this Florida law as a gig economy game-changer. 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, your regular Fisher Phillips attorney, or one of the attorneys in any of our Florida offices:

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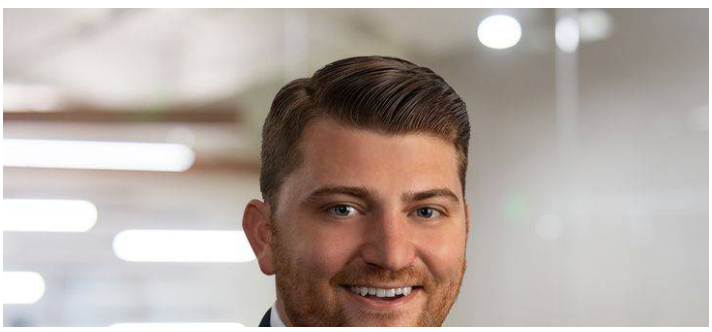

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