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Worker Classification in the Gig Economy: Legal Wins and Strategic Considerations for Employers

December 5, 2024
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The gig economy continues to prosper, fueled by some recent legal wins, which have been delivered at a crucial juncture for businesses reliant on the flexibility and cost efficiencies that come with classifying workers as independent contractors. These victories are not merely legal milestones — they are critical indicators of how companies can strategically navigate the complex area of worker classification to sustain their competitive edge amidst ongoing regulatory pressures and an anticipated paradigm shift due to the incoming Trump administration.

Recent Court Decisions: A Turning Tide

Over the past few years, a series of landmark court decisions have significantly shaped the legal landscape surrounding worker classification. A pivotal moment came with a 2018 decision by the California Supreme Court, which introduced the stringent "ABC test" for determining whether a worker is an employee or an independent contractor. Only a year later, California's legislature went further in enacting Assembly Bill 51, which codified the ABC test, but also created a multitude of job- and industry-specific exceptions to which ABC did not apply. Initially, these developments raised alarms among companies operating in the gig

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economy, as it heightened the risk of worker reclassification under California law.

However, the tide began to turn with the passage of Proposition 22 in California. This voter-approved initiative allowed gig economy companies to maintain the independent contractor status of their workers while providing additional benefits, such as healthcare stipends and minimum earnings guarantees. Despite facing significant legal challenges — including a recent challenge fought in the California Supreme Court to review its constitutionality — Proposition 22 has thus far remained intact. This outcome not only provides a blueprint for similar legislative efforts in other states but also reaffirms the viability of the independent contractor model in the gig economy.

In Massachusetts, a 2021 ruling by the United States Court of Appeals for the First Circuit further bolstered this trend by allowing ride-share companies to continue to classify their drivers as independent contractors. Meanwhile, in August, a federal judge in Pennsylvania dismissed a case brought by drivers of a rideshare company who alleged that they were misclassified as independent contractors instead of employees. For now, the gig worker economy continues to thrive, despite a multitude of legal obstacles seeking to undermine it.

Efforts to Broaden Employee Classification at the Federal and State Levels

Despite these favorable rulings, there has been a growing movement to broaden the definition of "employee" and reduce the classification of workers as independent contractors. At the federal level, the Protecting the Right to Organize (PRO) Act, which was passed by the U.S. House of Representatives in 2021 but has yet to clear the Senate, proposes to implement a version of the "ABC test" nationwide, making it potentially more difficult for companies to classify workers as independent contractors. However, with Republicans, who have been opposed

to the PRO Act, taking full control of Congress and the White House in the new year, its prospects, and the sweeping implications for worker classification that would come with it, look bleak.

The same is likely true of the U.S. Department of Labor's "Employee or Independent Contractor Classification Under the Fair Labor Standards Act" final rule established earlier this year, which reinstated the more stringent "economic dependence" standard. The "new" rule had rescinded the Trump administration's 2021 rule, which had sought to elevate factors relating to the workers' control over their work and their opportunity for profit or loss. With a likely swing back to the 2021 Trump-era rule, we could anticipate greater emphasis on a worker's "entrepreneurship," which may further strengthen the gig economy.

With the expected 180-degree pivot at the federal level, we may see even greater state actions to protect gig workers. New York has already introduced the "Freelance Isn't Free Act," which, while primarily focused on protecting freelancers from nonpayment, also reflects the state's broader interest in scrutinizing independent contractor relationships. Similar measures in states like New Jersey and Illinois have seen the enactment of legislation aimed at protecting freelancers and gig economy workers, and this trend may continue.

Strategic Implications for Employers

With an expected seesaw effect on rules regarding worker classification, the challenge is real for employers to stay legally compliant but also adaptable to a rapidly changing regulatory environment. One crucial step is the continuous review and refinement of independent contractor agreements. Employers should ensure that contracts clearly define the nature of the work, the level of control exercised by the company, and the independence of the contractor, to fortify the employer's defense against misclassification claims.

Looking Ahead: Vigilance and Adaptability

While recent court decisions have been favorable for gig economy companies, the broader debate over worker classification is far from settled. Worker advocacy groups and policymakers continue to push for reclassification and enhanced protections for gig workers, arguing that the current model leaves many workers without adequate benefits and security. Employers can better position themselves to navigate the complex and ever-changing landscape of the gig economy by staying informed, strategically managing worker relationships, and keeping their business models fluid. For guidance related to the newest trends in worker classification law, consult your Akerman labor and employment attorney.
