

The Gig Economy and Contractor Classification

The “gig economy” (a labor market characterized by short-term contracts or freelance work) continues to increase and could account for more than 50 percent of the U.S. workforce by 2027.

However, identifying whether a gig worker (or contingent worker, freelancer, or consultant) is an employee or independent contractor is one of the most confusing and contentious issues for gig workers and employers alike. Even more frustrating, a gig worker’s status can vary under federal and state law—the worker could be properly classified as an independent contractor under federal law but misclassified as an independent contractor under state law. Nevertheless, contractor misclassification could result in substantial financial liability for an employer.

Companies within the gig economy, including providers of freelance and project-based workers and temporary staffing agencies, and large consumers of their services, turn to Epstein Becker Green to help them ensure they are classifying their workforce correctly and to defend them if their practices are called into question. We provide clients with creative, comprehensive advice based on our deep knowledge of federal, state, and local wage and hour laws, as well as new legislation, rules, and cases affecting contractor classification.

Laying the Groundwork

Contractor classification concerns are of paramount importance to all companies seeking to hire gig workers. We provide proactive advice on where and how clients can most profitably incorporate contract or gig work into their business model with minimal enforcement risk. We also advise on hiring and retention policies, help clients define relationships with gig workers at the outset, and memorialize the details of those relationships in independent contractor agreements.

Focus Areas

Industries

HEAL®: Health Employment and Labor

Services

Employment, Labor & Workforce Management

Wage and Hour

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Conducting Internal Audits

Internal audits are an important tool to help businesses spot potential contractor misclassification issues. Clients rely on us to conduct thorough audits of their existing gig worker arrangements, including reviewing the type or amount of work these workers do, the longevity of their relationship, and the degree of their supervision, among other factors. If our audit turns up any misclassification risks, we advise our client on what actions to take to mitigate them and come into compliance.

Defending Against Class Actions and Government Investigations

Allegations of contractor misclassification can draw the attention of government agencies, unions, and plaintiffs' lawyers. We have extensive experience defending employers against independent contractor misclassification class actions and other private lawsuits in state and federal courts. And if government audits or investigations arise, employers turn to us to develop solutions that avoid or minimize their exposure. We also defend clients before departments of labor, taxing authorities, and workers' compensation boards.

Insights

[Mike Kun Provides Guidance on Independent Contractor Classification—Risks of Misclassifying and How to Evaluate a Worker's Status](#)

Media Coverage | *Thomson Reuters Practical Law Labor & Employment* | November 21, 2023

[Jeff Ruzal Quoted in "4-Day Workweek Shows Promise Despite Compliance Issues"](#)

Media Coverage | *Law360 Employment Authority* | October 10, 2023

[Andrew Lichtenstein Featured in "On the Move"](#)

Media Coverage | *Los Angeles Business Journal* | August 21, 2023



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Epstein Becker Green Continues West Coast Expansion with Employment Attorney Andrew Lichtenstein in Los Angeles

Firm Announcements | August 8, 2023

Jeff Ruzal Quoted in “DoorDash Tests Gig-Economy Model with New Hourly Wage Option”

Media Coverage | *Bloomberg Law Daily Labor Report* | July 18, 2023

Paul DeCamp Quoted in “How DoorDash’s New Pay Policy Muddies Gig Worker Debate”

Media Coverage | *Law360 Employment Authority* | July 17, 2023

Paul DeCamp Quoted in “DOL Sets New Schedule for Wage and Hour Rules”

Media Coverage | *Law360 Employment Authority* | June 15, 2023

Jeff Ruzal Quoted in “3 Emerging Wage and Hour Battlefields to Watch”

Media Coverage | *Law360 Employment Authority* | February 2, 2023

Paul DeCamp Quoted in “DOL Sets Schedule for OT, Independent Contractor Rules”

Media Coverage | *Law360 Employment Authority* | January 5, 2023