

Are Uber Drivers Employees?

Article By:

David J. Pryzbyski

With the advent of ridesharing services, there is an extremely large number of drivers for those companies out on the roads. But are drivers for Uber and similar companies “employees”? Over the years these companies have taken the position the drivers are not employees but rather independent contractors. The Office for the General Counsel of the National Labor Relations Board (NLRB) recently weighed in on this issue, and he agrees with Uber.

In a recently released [advice memo](#), the board concluded that Uber drivers are independent contractors under the National Labor Relations Act (NLRA). When analyzing the relationship between Uber and its drivers, the memo states that it needed to primarily evaluate: “(1) the extent of the company’s control over the manner and means by which drivers conduct business and (2) the relationship between the company’s compensation and the amount of fares collected.” Looking at those factors, the board held:

“Consideration of all the common-law factors, viewed through the ‘prism of entrepreneurial opportunity,’ establishes that UberX drivers were independent contractors. The drivers had significant entrepreneurial opportunity by virtue of their near complete control of their cars and work schedules, together with freedom to choose log-in locations and to work for competitors of Uber. On any given day, at any free moment, drivers could decide how best to serve their economic objectives: by fulfilling ride requests through the App, working for a competing ride-share service, or pursuing a different venture altogether. As explained in detail below, these and other facts strongly support independent-contractor status and outweigh all countervailing facts supporting employee status.”

The memo arrived at the same conclusion for UberBLACK drivers – another category of driver – based on the same analysis. The NLRB’s newly restored test for evaluating independent status was cited extensively.

Independent contractor status poses significant consequences under the NLRA because such workers are not covered under the act. This means they cannot form unions or seek redress for any alleged violations of the NLRA. However, employers must take care to ensure they do not misclassify workers as independent contractors because that can pose significant legal risk. This new advice memo sets forth a potential roadmap for companies desiring to use an independent contractor model, at least when it comes to the NLRA.

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