



A recent California agency decision draws Uber into the fray over the controversial issue of when workers are employees or independent contractors. The decision came to light last week after Uber appealed the California Labor Commission's June ruling that Uber driver, Barbara Ann Berwick, was an employee of Uber, not an independent contractor.

The issue of classifying workers as employees or independent contractors is controversial because employee status brings with it a myriad of additional issues and costs to employers including the cost of providing employees with benefits, paying various taxes, and costs associated with overtime pay and reimbursement of business expenses. Courts across the country have examined the issue of employee/independent contractor status and decisions have fallen on both sides of the fence. The Uber decision coincides with the U.S. Department of Labor's recent announcement that it will issue an "Administrator Interpretation" aimed at clarifying the employee/independent contractor dichotomy (more information available in an earlier post here).

Uber, a company recently valued at \$50 billion, provides a phone app that allows its workers to use their own vehicles to provide transportation to those needing a ride around their city. The Uber user simply opens the app and requests a ride and an available Uber driver in the vicinity "claims" that rider, picks them up, and drives them to their destination. The Uber driver provides all of their own materials, with the exception of an iPhone if the driver does not already have one, in which case Uber will provide one.

Berwick filed a complaint against Uber seeking reimbursement for the costs of fuel and tolls that she incurred during her short two-month period working as an Uber driver. Significantly, the California Labor Commission held that Berwick qualified as an employee of Uber and, as a result, awarded her \$4,152.20.

The California Labor Commission's Uber decision interpreted California's laws distinguishing between employees and independent contractors; however, the factors cited under the California law are nearly identical to the federal law factors. These factors include, among others: whether the work is an integral part of the employer's business; whether the worker or the employer supplies the instrumentalities and tools of the work; whether the service rendered requires a special skill; and degree of permanency of the working relationship. The California Labor Commission found that Berwick's work was integral to Uber's business, and that she was not providing any sort of independent business or personal service. The Commission further cited to the following behavior by Uber in support of its decision that Berwick was an employee: the Company conducts extensive background checks; provides drivers with iPhones; controls the tools the drivers use by setting certain standards (i.e. cars cannot be older than 10 years old); and terminates drivers if their driver rating drops below a certain level.

As Uber noted in response to the decision, the ruling is limited to Berwick. It could, however, be indicative of how courts may rule on this issue in the future. Companies like Uber that have workers that teeter on the line between employee and independent contractor should pay close attention to these cases and the Department of Labor's anticipated guidance. Considering the Department of Labor's recent focus on employers' use of the independent contractor status for their workers, it is highly anticipated that the Department's guidance will lean in favor of classifying more workers as employees. We will continue to provide updates on this issue as more information becomes available.