



## **e-Alert: Three Uber Drivers Deemed Employees in New York Ruling Employers with 1099s Should Take Note**

### **Background**

New York regulators have ruled that some Uber drivers should be considered employees, at least for the purposes of unemployment insurance. The Unemployment Insurance Appeal Board of New York State has ruled that Uber is liable for unemployment benefits for three drivers, along with others who are “similarly situated.”

Uber and other companies operating in the gig economy claim their workers are independent contractors, not full-time employees, and thus aren't entitled to benefits like unemployment insurance. This business model reduces costs for companies and Uber has said that it benefits drivers by giving them more flexibility. But many drivers treat working for Uber like a full-time job, leading to calls for driver benefits.

The New York ruling means that the drivers can collect unemployment insurance in New York, but Uber still has an opportunity to appeal the decision in state court.

### **Takeaway for employers**

The ruling upholds a 2017 finding by an administrative judge, arguing that “the overriding evidence establishes that Uber exercised sufficient supervision, direction, and control,” over the three drivers filing the lawsuit so as to create an “employer-employee relationship.” Employers in Massachusetts, New Jersey, California, and other states use what is called the ABC Test to determine if a worker should be classified as an employee.

Employers with 1099 workers should take note of this ruling. They should be aware of how much control they are exercising over independent contractors. Employers should be able to answer yes to all three parts of the ABC Test if they want to classify workers as independent contractors:

- The work is done without the direction and control of the employer;
- The work is performed outside the usual course of the employer's business; and
- The work is done by someone who has his or her own, independent business or trade doing that kind of work.

Additionally, if employers determine that the worker is classified properly as a 1099, they should always have a written agreement with contractors.

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