



e-Alert: Uber to pay \$1.3 Million to Settle Nationwide Misclassification Suit

Background

A federal district court in North Carolina has approved a \$1.3 million Fair Labor Standards Act (FLSA) settlement agreement between Uber and a class of about 5,200 drivers. Each driver will receive between \$50 and \$5,000. The basis for the lawsuit was that Uber drivers are employees, not independent contractors, and, as employees, they should have been “entitled to basic wage protections such as expense reimbursement (i.e., gas, cost of insurance, lease payments, and repair, among others), overtime pay, rest- and meal-breaks, and other benefits that attach to employees and that do not likewise attach to independent contractors.”

Are drivers employees?

The settlement agreement leaves employers scratching their heads because it does not really finalize whether the drivers are contractors or employees. What is, however, most important for employers to know is how local courts determine classification. Massachusetts, for example, has rigid rules around contractors and assumes workers are employees unless they perform a service “outside the usual course of the business of the employer,” in which case they are classified as independent contractors. 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.

Takeaway for employers

Employers with 1099 workers (those who, as independent contractors, complete a 1099 tax form instead of a W2) should take note of this settlement. They should be aware of how much control they are exercising over independent contractors and 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 the worker.

This content is provided with the understanding that HR Knowledge is not rendering legal advice. While every effort is made to provide current information, the law changes regularly and laws may vary depending on the state or municipality. The material is made available for informational purposes only and is not a substitute for legal advice or your professional judgment. You should review applicable laws in your jurisdiction and consult experienced counsel for legal advice. If you have any questions regarding this content, please contact HR Knowledge at 508.339.1300 or [email us](#).