Uber Litigation Continues To Serve As Legal Lightning Rod for “On Demand” Economy

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Cases challenging the independent contractor status of certain service providers under the wage-and-hour laws are likely to continue in the near future due to the difficulties in applying the law to complex factual patterns. The Department of Labor recently provided additional guidance for determining contractor status in the form of an Administrator’s Interpretation (and the National Labor Relations Board also weighed in, modifying its view of “joint employment” in Browning-Ferris Industries of California, Inc., 362 NLRB No. 186 (Aug. 27, 2015)). A recent case involving Uber drivers may be a bellwether. O’Connor, et al. v. Uber Technologies, Inc., N.D. Cal. C-13-3826.

The named Plaintiffs are Uber drivers alleging that in classifying them as independent contractors, the company violated various provisions of the California Labor Code. Uber’s position, and that of its many advocates, is that it exerts insufficient control over the drivers’ work to be deemed their “employer,” and merely identifies those in need of a service with the providers of that service, similar to the way in which eBay pairs purchasers of a product with sellers of that product. Worker advocates, however, argue that the traditional labor and wage and hour laws (many enacted decades ago and unchanged since), must be interpreted to protect the thousands of individuals providing services under Uber’s business model.

Adjudication on the merits in O’Connor has yet to occur, and appeals invariably will follow, setting the stage potentially for the Supreme Court to fashion an appropriate rule balancing labor and wage policy with the freedom to innovate and bring technology to bear in the new economy.

Those operating—or contemplating—an “on demand economy” business model should closely monitor developments in this case and stay abreast of other judicial and legislative changes potentially impacting the business model.

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