

Independent Contractor or Employee?

The bare facts to drive your decision

Background

- * History of independent contractors
 - * Use by state governments
- * Definitions
 - * Department of Labor
 - * Internal Revenue Service
- * Notable cases
 - * FedEx Ground
 - * King Arthur's Lounge

Uber

- * *Uber Technologies, Inc., a Delaware Corporation, v. Barbara Berwick*, CGC-15-546378 (California Labor Commission Appeal) (Commission Case No. 11-46739)
- * Issue: Whether or not Barbara Berwick (Berwick) is an independent contractor or employee of Uber Technologies, Inc. (Uber)?
- * Commission Ruling: Berwick is an employee of Uber. (The Commission relied heavily on *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations*, (1989) 48 Cal. 3d 341, and *Borello's* balancing test, which includes 13 factors to consider when determining whether or not an employer/employee relationship exists.)
- * *Douglas O'Conner et al. v. Uber Technologies et al.*, U.S. District Court, Northern District of California, C-13-3826, (Court denied Uber's Motion for Summary Judgment; case still pending before the Court. It should be noted that the Court denied the Summary Judgment for many of the same reasons that the Commission of Labor found the Berwick is an employee of Uber. However, this merely means that the case can now proceed to a jury trial, as opposed to a Judge deciding the issue as a matter of law.)

How does this affect us?

- * How does your state use independent contractors?
- * What are the risks?
- * Continue to monitor

Questions and discussion