

# Independent Contractor Litigation Highlights the Need to Properly Classify Workers

The United States Department of Labor ("DOL") has identified employers' misclassification of employees as independent contractors as one of the "most serious problems facing affected workers, employers and the entire economy." The Internal Revenue Service ("IRS") estimates that employers across the country have misclassified millions of employees as independent contractors.

Over the past year, the DOL's Wage and Hour Division has been working with the IRS and state agencies to investigate the misclassification of employees as independent contractors. Those investigations have led to awards of more than \$74 million in back wages for more than 102,000 workers.

Most recently, Uber, a ride-sharing service, was the subject of allegations that it misclassified its drivers as independent contractors. In April 2016, Uber reached a settlement in a pair of class action lawsuits brought in California and Massachusetts. The proposed settlement would have allowed Uber to continue to classify its drivers as independent contractors, but also required Uber to pay as much as \$100 million to the drivers represented in the cases. Recently, however, a federal court in California rejected the proposed settlement, in part because the court did not believe that the settlement payment was large enough.

Numerous other companies have faced similar allegations relating to misclassification of workers:

- In 2015, FedEx settled a class action lawsuit in California for \$228 million after a federal appeals court ruled that FedEx drivers were misclassified as independent contractors.
- Lyft, another ride-sharing service, will likely soon settle a class action lawsuit regarding misclassification of workers for \$27 million. This comes after the judge initially rejected a \$12.5 million settlement offer, stating that it "shortchanged" drivers.
- In 2014, a California newspaper publisher was ordered by a state court to pay \$3.2 million in damages, \$1.75 million in interest, and \$6.1 million in legal fees after the court determined that the publisher misclassified its paper carriers as independent contractors.

## POSTED:

Sep 13, 2016

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Employers must be cautious when classifying workers as independent contractors because the DOL is aggressively investigating alleged misclassifications. Although classifying workers as independent contractors allows employers to avoid certain costs associated with employees, misclassification could lead to time-consuming and expensive litigation. In order to avoid such risks, employers should carefully consider, with the aid of legal counsel, whether a worker is actually an employee rather than an independent contractor. This determination is fact-specific and requires consideration of both federal and state law.

If you have any questions about the classification of workers, please contact [Rob Driscoll](#), [Katie Triska](#) or your Reinhart attorney.

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