Uber Contractor/Employee Status to be Determined by Federal Jury

PS&H Employment Partner Michael A. Gamboli, who is based in the firm's Providence office, is quoted extensively in the February 6 *Rhode Island Lawyers Weekly* talking about the new "gig economy" and a highly anticipated decision from the federal District Court in Rhode Island, on the issue of whether Uber drivers are employees of the company or work as independent contractors.

The issue arose from the case, *Narayanasamy, et al. v. Issa, et al.*, a negligence action brought by an Uber passenger who was seriously injured in a collision, naming both the driver and Uber under the theory of respondeat superior.

Chief Judge John J. McConnell Jr. denied Uber's motion for summary judgment, concluding that because "reasonable people could differ" on whether the driver was acting as an employee or an independent contractor, the matter was for a jury to decide.

Michael explained that applying traditional employment law concepts to the new "gig economy" has been a hot topic across the country in the last few years.

"Similar to various anti-discrimination laws being applied to website retailers, courts are being asked to figure out how to apply laws that were simply not written to address new technology and technology-based services," Michael said.

Michael reported that ride-sharing services such as Uber, food delivery companies such as Grubhub, and housing rental platforms such as Airbnb, are defending thousands of claims, the majority of which are being brought as class actions under the Fair Labor Standards Act (FLSA). And while most of those actions center on arbitration agreement disputes, Issa presents a less typical scenario relating to a car accident.

The test for whether an employment relationship exists varies from state to state and under federal law, resulting in different outcomes elsewhere.

"For example, the U.S. Department of Labor issued an opinion last year finding that a company was not an employer because the workers, among other things, were free to work when, where and for as long or short as they wanted," Michael said.

"Courts in Illinois, Florida and Pennsylvania have also favored the company's position. Conversely, in what seems like a stretch, New Jersey's unemployment office decided that Lyft drivers are employees for purposes of unemployment benefits on the basis that the company 'controlled' the drivers since they could not provide services without using the Lyft app."

Michael explained that the FLSA uses a so-called "economic realities" test that relies on six principal factors, such as the worker's opportunity for profit and loss, the initiative required, and the permanency of the relationship.

Under Rhode Island state law, the issue is to what extent a company has the right or power to "control the manner and means" by which a worker performs the services in question.

And while there are no "hard and fast" rules, Michael said a Rhode Island court will consider all of the facts bearing on the issue, such as the parties' intentions, the terms of their contract, the extent to which the company controls the details of the work, and how the person is paid.

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