



Employee vs. Independent Contractor **US DOL & NLRB Say Gig Employees Are Independent Contractors**

Within the past two months, both the U.S. Department of Labor ([DOL](#)) and National Labor Relations Board (NLRB) have [issued guidance](#) suggesting that so-called "gig economy" workers, such as Uber drivers, are generally independent contractors, rather than employees.

This federal guidance does not exempt gig economy employers from potential liability for improperly classifying an employee as an independent contractor under any applicable state or local law. Also note that the New York State Department of Labor ([NYS DOL](#)) and the Internal Revenue Service ([IRS](#)) also have their own tests used to analyze workers' classification.

As we have written in the past, DOL's usual six-factor test for the employee vs. independent contractor question, which was also relevant to the NLRB's guidance is:

- The nature and degree of the potential employer's control;
- The permanency of the worker's relationship with the potential employer;
- The amount of the worker's investment in facilities, equipment, or helpers;
- The amount of skill, initiative, judgment, or foresight required for the worker's services;
- The worker's opportunities for profit or loss; and
- The extent of integration of the worker's services into the potential employer's business.

Please [contact](#) our office with any questions you have about worker classification.

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