



shuttling between independent contractor and employee

MSK Client Alert

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Recently, the National Labor Relations Board ("NLRB" or the "Board") returned to its long-standing independent-contractor standard, known as the common law agency test. In *SuperShuttle DFW, Inc.*, the Board ruled that shuttle-van-driver franchisees of SuperShuttle at Dallas-Fort Worth Airport are not statutory employees under the National Labor Relations Act ("NLRA"), but rather independent contractors excluded from the NLRA's coverage.

In reaching this holding, the Board considered factors including the franchisees' leasing or ownership of their work vans, method of compensation, control over their daily work schedules and working conditions, absence of supervision, and the parties' understanding that the franchisees were independent contractors. The Board determined these factors provided the franchisees with significant "entrepreneurial opportunity" for economic gain. The Board's *SuperShuttle* decision expressly overruled its 2014 decision in *FedEx Home Delivery*, which modified the common law agency test by limiting the significance of a worker's entrepreneurial opportunity for economic gain.

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Jonathan M. Turner

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