EEOC's Tweet Reminds Employers of its Stated Interest in Protecting Gig Economy Workers

Labor & Employment Law Update

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On January 6, 2017, the United States Equal Employment Opportunity Commission's (EEOC) twitter account confirmed the federal agency's interest in "gig economy" workers. "Gig economy" workers refer to individuals working in modern, flexible employment structures that contract with an employer for a short-term project or on a job-by-job basis, rather than working in traditional, long-term relationships with a single employer. For example, gig economy workers generally reference temporary workers, freelancers, independent contractors, and staffing agency workers.

The EEOC's January 6, 2017 tweet referenced a recent legal decision from across the pond regarding gig economy workers. In that case, a British woman working as a bicycle courier for a large courier firm claimed she should be classified as an employee of the firm rather than as self-employed, a distinction that under British law would entitle her to employee work benefits, including holiday pay, sick pay and payment at or above the minimum wage. After considering the degree of control the firm exercised over its bicycle couriers, the British tribunal ruled in the bicycle courier's favor, finding her to be an employee.

The EEOC's tweet echoes the EEOC's Strategic Enforcement Plan (SEP), which was released in October 2016 and was previously covered on this blog on January 3, 2017. The EEOC's SEP specifically identified the following as a priority for the agency: "[c]larifying the employment relationship and the application of workplace civil rights protections in light of the increasing complexity of employment relationships and structures, including temporary workers, staffing agencies, independent contractor relationships and the on-demand economy." The EEOC has repeatedly made it clear that it intends to scrutinize and target the gig economy workforce to ensure those workers are not improperly overlooked when it comes to fair employment practices, including compliance with federal anti-discrimination, harassment, retaliation and wage laws.

Employers utilizing any sort of short-term or "gig economy" workers should be aware of the EEOC's priority and not automatically assume the protections afforded under Title VII, the Americans with Disabilities Act, and the Age

Discrimination in Employment Act do not extend to on-demand or short-term workers. Employers must also ensure they are properly classifying workers under the Fair Labor Standards Act in light of the recent surge of lawsuits in the United States alleging that gig economy workers have been improperly classified as independent contractors rather than employees. Employers should consider a variety of factors put forth by the U.S. Department of Labor and courts in determining appropriate classifications, including, but not limited to, whether the worker operates or works for an independent business, the worker's degree of control and independence over his or her work, the permanency of the work relationship, the worker's investment in work resources, the dependency of the worker's business on the relationship and the extent to which the work performed is an integral part of the employer's business. Finally, remember that classifying a worker as an independent contractor based on "industry standard," is not a defense to a misclassification claim.

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