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EMPLOYEES OR CONTRACTORS? A POTENTIAL SHIFT IN POLICY & ITS CONSEQUENCES

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On Monday, April 29, 2019, the Labor Department issued an "opinion letter" finding that an unidentified company, with a work force that reportedly cleans residences, are contractors—not employees. Accordingly, the unidentified company will be exempt from offering certain employee protections such as minimum wage, overtime pay, and benefits. This also means that the unidentified company will not be required to pay its share of social security taxes. On the surface, the letter has minimal impact because it is only applicable to the unidentified company. However, with the growing presence of gig-economy companies and the progressive rollback of Obama administration guidance pertaining to companies' classification of workers, this isolated letter may not be so isolated.

Gig-companies include those that use a digital network to dispatch workers—think Uber and Lyft; and the number of workers within the industry are reported to be between one million to five million at any time.[1] Needless to say, the financial impact of classifying workers is significant. According to industry officials, a work force of employees costs companies 20 to 30 percent more than a work force of contractors.[2] For companies like Uber and Lyft, this means hundreds of millions of dollars. In the twenty-first century, platform-type business models are becoming more prevalent and the debate of how to classify workers seems to be on a swinging pendulum depending on the White House administration.

The Obama administration took a proactive approach in its attempt to curtail any abusive practice pertaining to the classification of worker—even suggesting that gig workers were likely to be employees. Conversely, the Trump administration quickly rescinded from the Obama administration views, specifically pertaining to gig company worker classification. The consequence of a letter like that issued by the Labor Department on Monday could be that there will be an influx of companies, seeking to classify their workers as contractors, aggressively pursuing legislative and regulatory rulings to protect their classification decisions. Time will tell whether things such as Monday's isolated letter becomes administration policy.

For more information on this topic, please contact Marianne Curtis or Lenny Samuels on the firm's Dispute Resolution Team.

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[1] JPMorgan Chase & Co. Institute. The Online Platform Economy in 2018 Drivers, Workers, Sellers, and Lessors, www.jpmorganchase.com/corporate/institute/document/institute-ope-2018.pdf. Accessed 30 Apr. 2019.

[2] Scheiber, Noam. "Is Gig Work a Job? Uber and Others Are Maneuvering to Shape the Answer." The New York Times, March 26, 2019.

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