THE INDEPENDENT CONTRACTOR VS. EMPLOYEE CLASSIFICATION ISSUE IN FLORIDA UNEMPLOYMENT COMPENSATION CLAIMS DETERMINATION: AN INTRIGUING APPEAL AGAINST THE BACKDROP OF MULTIPLE BATTLES INVOLVING UBER

January 5, 2016

By: Frank Scruggs

As Uber seeks Florida legislation, through House Bill 509 and Senate Bill 1118, to establish a regulatory regime that preempts local ordinances and codifies a framework for designation of its drivers as independent contractors rather than employees, it faces a driver's appeal of the denial by the State of Florida Department of Economic Opportunity ("DEO") of his claim for unemployment compensation on the grounds that he is not an employee under Florida law.

The driver, Darrin McGillis, on December 22, 2015, filed the record and transcripts in support of the appeal that he initiated December 4, 2015 in Florida's Third District Court of Appeal (in Miami-Dade County). Initially successful in proceedings before the State of Florida Department of Revenue to establish an entitlement to Unemployment Compensation, the driver lost his administrative appeal to DEO, which concluded that that he, under Florida law, is not an employee to whom Uber has liability for unemployment compensation, but rather is an independent contractor.

Unemployment Compensation, also formerly known as Unemployment Insurance here, is currently denominated, "Reemployment Assistance."

The driver's appeal occurs against the backdrop of multiple disputes between Uber and some of its drivers, competitors in the taxicab and limousine industries, and local governments seeking, through ordinances, to impose insurance, licensure, and other requirements. The appeal is intriguing for two reasons. First, because of the consistency with which Florida's Third District Court of Appeal has ruled in favor of companies opposing claims for unemployment compensation on the basis that they, in fact, exercise insufficient control over the claimants to be regarded as their employers.

The Third DCA has so ruled in appeals involving challenges to Unemployment Compensation claims determinations in ten cases spanning four decades and involving an interviewer, freight carrier, attorney's secretary, county poll worker, temporary laborer, performers in radio and television commercials, telephone sales personnel, and home health care therapists.

Second, because the DEO decision elevated the individual claim of Mr. McGillis to a statewide policy making platform, the appeal of its decision suggests that Mr. McGillis and his advocates will file a brief that challenges

the reasoning of a well-crafted, wide ranging Florida agency ruling that criticizes decisions made in California and Oregon, where drivers, public officials, and competitors seek to impose employer status upon Uber.

As Uber battles on multiple fronts to cause law and public policy in Florida and across the country to accommodate its use of technology and its associated labor model, the McGillis appeal warrants watching.

For more information on this topic, please contact Frank Scruggs on the firm's Dispute Resolution Team.

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