

Employment Law Considerations For Engaging Gig Workers

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In a growing technological and global marketplace, the labor market is expanding to accommodate the “gig economy,” a labor market characterized by short-term, freelance or other alternative work relationships. Though app-based businesses and delivery companies typically come to mind when referring to the gig economy, many Fortune 500 companies are actively engaging gig workers for the performance of some other functions, such as, marketing, payroll and human resources tasks. Given the current market for contingent workers, independent contractors, and freelance workers, businesses must consider the benefits and disadvantages of engaging gig workers.

Benefits of Engaging Gig Workers:

The engagement of gig workers has the potential to be cost-efficient and complementary to certain business structures. For example, there are reduced training and onboarding costs for gig workers as they are generally expected to come prepared with the necessary skill, education, and experience to perform the job. There is also the potential for reduced costs while attracting top talent from a larger applicant pool by engaging remote workers from different geographical locations. Some companies further enjoy the ability to more easily calibrate their workforce according to business needs. Lastly, there is reduced legal exposure for alleged violations of local, state and federal employment laws when gig workers are properly classified.

Disadvantages of Engaging Gig Workers:

Though there are measurable benefits of engaging gig workers, there are also notable disadvantages. Specifically, the continuous engagement of gig workers may translate into high turnover for a company. Additionally, companies have less control over gig workers than traditional employees, which could ultimately affect the company’s work culture. Another issue is that gig workers can be engaged in a non-exclusive work relationship, which raises the concern about their access to company information and the potential for confidential information and trade secret breaches. Companies should also consider the potential for joint employer liability for gig workers who are engaged by more than one company at a time. This leads into one of the ever-looming disadvantages of engaging gig workers, which is the potential for misclassification of workers that have a less than clearly defined work relationship.

Best Practices to Avoid Misclassification of Gig Workers:

For companies to reap the benefits of engaging gig workers, the workers must be properly classified. In fact, misclassification of a gig worker could result in significant financial consequences for a company. For example, a misclassified gig worker who should have been

classified as an employee may be entitled to rights under federal, state and local wage/hour, discrimination, and other employment laws. This means that companies that do not properly classify their gig workers could be required to pay back pay, including overtime compensation, employee benefits, workers' compensation benefits, insurance premiums, social security, unemployment, tax obligations, liquidated damages, and civil monetary penalties.

In an effort to assess and reduce legal risk, companies should consider the following before engaging a gig worker:

- Definition of the scope of engagement;
- Necessity and suitability of written agreements to define the work relationship;
- Creation of separate policies applicable to gig workers and traditional employees who work for the same company;
- Determination of pay structure; and
- Determination of responsibility for expenses and overhead costs of gig workers.

Given the evolving landscape of alternative work relationships, employers should consult an attorney to become informed of current laws in the states where they engage gig workers and how those laws affect their workforce.