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Meet Nancy Gray



In a diverse legal career that has spanned over three decades, attorney Nancy Gray has represented hundreds of clients in a variety of civil matters, including labor and employment (management/employee); sexual harassment, discrimination, wrongful

DOL Weighs In On Summer of Wage Disputes with New Administrative Advisory Opinion

This summer has been a confusing time for employees, interns, and independent contractors across the nation. From Uber drivers to Hollywood gofers, courts from New York to California have weighed in on what it means to be an employee. Recently, the Department of Labor (DOL) issued an advisory opinion which reminds employers how the DOL interprets the Fair Labor Standards Act.

This opinion clarifies the DOL's stance that most workers should be properly classified as employees, rather than as independent contractors. According to the DOL, many more employers than previously thought may be on the hook for unpaid wages, unpaid overtime, and missing benefits.

Reversing the Trend

Over the past decade, many employers have moved away from traditional 9-to-5 employees and moved towards classifying workers as independent contractors. Companies like Uber and FedEx have contracted out work to independent professionals, saving millions of dollars in payroll taxes

termination; commercial, contract and business issues.

Among other highlights, Ms. Gray served as Assistant District Attorney in New York, spent seven years with a national law firm working on complex pharmaceutical and medical device cases, and successfully litigated and coordinated cases around the country. She has a unique expertise in matters pertaining to the adulteration of extra virgin olive oil.

Ms. Gray has also lectured and written on a variety of topics, including expert testimony, drug and medical device regulation, sexual harassment, employment practices and child performer issues.

In 1997, she started her own firm, based in Los Angeles.

Having been raised in New York City, Nancy enjoys dramatic, musical and comedy theater as well as pro sports. She is a PADI-certified scuba diver. Among her favorite reading material is Bon Appetit and anything pertaining to criminal behavior and behavioral profiling.

Accreditations

The logo for Super Lawyers, featuring the words "Super Lawyers" in a stylized, bold, serif font with a gold-to-brown gradient and a drop shadow effect.

and other costs and expenses.

This is because being classified as an employee, rather than an independent contractor, comes with many perks. Under the Fair Labor Standards Act (FLSA), an employed worker is able to receive health and unemployment insurance, workers' compensation benefits, pay for overtime work if non-exempt, and reimbursement for certain costs that a worker incurs on behalf of his or her employer.

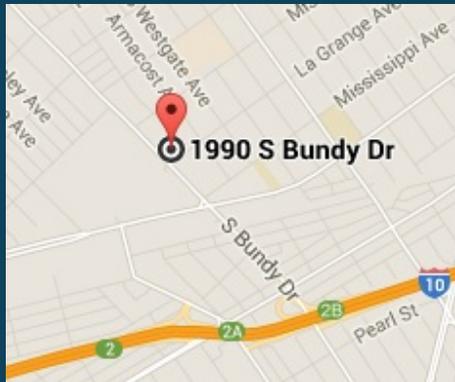
In contrast, a worker who is an independent contractor does not receive many of these benefits. An independent contractor is basically self-employed; he or she must pay for their own maintenance costs, taxes, and health insurance. In exchange for fewer benefits, the independent contractor has much more control over his or her work and schedule.

Before the DOL's advisory opinion, the courts, labor boards, and employers relied on a common law test to determine if workers were employees or independent contractors. This test looked at whether the employer had the right to control or direct how work was done or how the person completed the project. If an employer only cared about the result of a project, and not how the worker spends his or her daily time, then it was likely that the worker was an independent contractor. However, if the employer had the ability to control a worker's day-to-day tasks, such as when the worker arrived and left, or how the work got done during the day, then that person was usually considered an employee.

Economic Realities

While the factors used in this common law test are still relevant, the DOL's advisory opinion stresses that these factors may have been weighted incorrectly. Rather than focusing on the amount of control an employer had over a worker, employers should have been using the "economic

Directions



About Gray & Associates P.C.



Attorney Nancy Gray of Gray & Associates, P.C. has more than 30 years of experience providing personalized attention and creative solutions to her clients' legal issues.

Whether you need a strong litigator, a labor and employment advocate, or a savvy business law attorney, you can rely on Gray & Associates to provide you with excellent

realities" test to determine if a worker was an employee.

Under the economic realities test, most independent contractors are probably misclassified. This test says that if a worker is economically dependent on the employer, then that worker is an employee and not an independent contractor. When workers make most or all of their income from an employer, it is likely that the DOL will consider them employees under the FLSA. Unless workers are truly in business for themselves, then most workers will be considered employees and not independent contractors.

As part of this test, the DOL also examines whether or not a person's work is integral to an employer's business. The more the work is related to the purpose of the business, the more likely that that worker will be considered an employee. For example, if a construction company hires a worker to pour the concrete foundation of a building, that work is necessary for the construction company to survive. Under this test, the person would be considered an employee for however long as he or she works for the company. In contrast, if the same construction company hired a designer to create a new website, that work is not integral to the purpose of the construction company, and the designer would likely be considered an independent contractor.

That example also ties in with the economic realities test. It is likely that the website designer has other clients and other ways of making money while he or she is working for the construction company. It is less likely that the construction worker has other jobs or other sources of income during the time he or she is working for the construction company.

Opinion Affects Court Cases

It didn't take long for the DOL's opinion to start making waves across various pending lawsuits. Shortly after the

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opinion, US District Judge Edward Chen in California ruled that up to 160,000 Uber drivers may join together in a class action suit against the company. The Uber drivers argue that they should be classified as employees, and are owed back compensation for overtime, vehicle maintenance costs, and other expenses.

The decision to certify Uber drivers into a class action lawsuit also comes shortly after FedEx agreed to pay one of the largest employment law settlements in history. After the Ninth Circuit Court in California and Seventh Circuit in Indiana ruled that FedEx drivers were employees, rather than independent contractors, the company agreed to create a \$228 million settlement fund to resolve claims from over 2,000 drivers.

Between the massive Uber class, the FedEx settlement, and the DOL's advisory opinion, employers who hire freelance workers or independent contractors should be on notice of changes to their business model. The DOL opinion makes it clear that even if there is an independent contractor agreement between an employer and a worker, the relationship between the parties and the economic realities of the workers' situation will determine a worker's status under the FLSA.

If your company is planning on using contractors to complete a job, you need to make sure that your company is in compliance with the changing state and federal laws regarding the classification of workers.

If you are unsure about how you should classify the people you hire, consult with an experienced Los Angeles employment law attorney. Attorney Nancy Gray has represented both employers and employees on a wide variety of employment law issues, and can help you or your company stay on the right side of the law. For your free initial consultation with a California employment attorney, call (310) 452-1211 or visit

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