

FIRM NEWS

ON-DEMAND WORKERS: WORKFORCE TREND OR BUSINESS MODEL THAT'S HERE TO STAY?

Detroit, Michigan
April 20, 2015

PROFESSIONALS

Patricia Nemeth

Lawsuits threaten the future of Uber and other 'disruptive' businesses pushing the boundaries of traditional notions of employer and employee

Whether one has hopped into an Uber car or not, the relatively new taxi service company has caused some to slam on the brakes when considering its on-demand worker foundation. While some view the company as disruptive to the workforce in terms of its non-employment strategy, others see the use of on-demand personnel as the labor market and technology pushing the boundaries of traditional notions of employer and employee. Patricia Nemeth, founder of Detroit-based management side labor and employment law firm Nemeth Law, P.C., says the taxi company's business model, one increasingly used by other emerging and often app-based companies as well, is analogous to what some industries have been doing for years – albeit on a much larger scale.

“Hospitals and nursing homes have used ‘contingent’ workers to supplement their full and part-time workforce for years,” Nemeth said. “While Uber is not using its drivers to supplement staffing, the concept of an on-demand employee is not new.”

Employers and on-demand contingent workers enjoy this flexible employment relationship for a variety of reasons. While some Uber drivers may work several jobs to make ends meet, others moonlight as drivers to make extra money in addition to income from their full-time job.

“One of the criticisms of allowing Uber to operate solely by on-demand workers is the organization is not required to offer benefits,” Nemeth said. “With the Affordable Care Act, employees can buy their own health insurance. Yet this cost savings has some workers questioning if the Uber business model is legal.”

Nemeth notes there have been several high-profile lawsuits against companies utilizing on-demand workers. For example, app-based companies such as Handy, Uber and Lyft are dealing with lawsuits challenging the classification of these workers as non-employees. If they are successful, it may put a quick halt to the rise in such services, as well as the use of independent contractors by these types of companies.

“Uber has brought attention to the use of an on-demand workforce and the success it can create for an organization; but it has also brought attention to the pitfalls companies may run into by attempting to utilize a workforce without the overhead of regular employees,” Nemeth said.

Nemeth said companies that plan on using on-demand workers as a business strategy need to consider the following:

- The pros and cons of using an independent contractor/on-demand worker versus a full-time employee including wages, benefits, taxes, insurance, the potential of misclassifying the individuals and, from a talent perspective, whether a company can grow and sustain itself and build value using an on-demand worker model.
- Conducting an audit to insure the individual is properly classified as an on-demand worker/independent contractor.
- Making sure the audit conducted looks at applicable classification tests the U.S. Department of Labor uses, as well as the Internal Revenue Service and the State of Michigan.
- Involving a corporate accountant, corporate attorney and employment attorney before adopting a specific employment model to insure all bases are covered.

About Nemeth Law, P.C.

Nemeth Law specializes in employment litigation, traditional labor law, mediation and arbitration and management consultation for private and public sector employers. It is the largest woman-owned law firm in Michigan to exclusively represent management in the prevention, resolution and litigation of labor and employment disputes.