

Adam Sencenbaugh in HR Magazine: 'Independent-Contractor Classifications May Need to be Reviewed'

May 28, 2021 Adam Sencenbaugh

PRACTICES Labor and Employment, Employment Litigation, Wage and Hour Litigation, Litigation, Climate Change and Corporate Sustainability

Haynes Boone Partner [Adam Sencenbaugh](#) was quoted in an *HR Magazine* article about factors that must be met for a worker to be properly classified as an independent contractor.

Here is an excerpt:

Proper classification of workers depends on applying the right test, which may differ under federal and state law.

Earlier this month, the Department of Labor (DOL) withdrew the prior administration's independent-contractor rule. That rule, which never took effect, would have made it easier for businesses to classify workers as independent contractors rather than employees. Secretary of Labor Marty Walsh recently said many gig workers should be classified as employees, Reuters reported.

Approximately 55 million people in the U.S.—or 34 percent of the workforce—were gig workers in 2017, according to the International Labor Organization, and that percentage was estimated to rise to 43 percent in 2020. Independent contractors are not covered by the Fair Labor Standards Act (FLSA) and consequently aren't subject to minimum-wage or overtime requirements. In addition, gig workers aren't entitled to employee benefits.

'ABC Test'

Some states, such as California, Illinois, Massachusetts and New Jersey, apply a more stringent standard known as the "ABC test." ... the following factors must be met for a worker to be properly classified as an independent contractor:

- The worker is free from the control and direction of the hiring entity in connection with the performance of the work (Absence of control).
- The worker performs tasks that are outside the usual course of the hiring entity's business (Business of the worker).
- The worker is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed for the hiring entity (Customarily engaged).

Under the ABC test, a worker is presumed to be an employee unless a hiring entity can show all three factors, noted Adam Sencenbaugh, an attorney with Haynes Boone in San Antonio and Austin, Texas.

To read the full article, click [here](#). (Subscription required)