Defending the Right To Use Independent Contractor Drivers In Airport Ground Transportation

Presented by:
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Why Use Independent Contractors

• Beneficial to Operator/Drivers and Company
• Operator/Drivers can earn more by working heavy traffic times at airports
• Company keep operating costs lower: no overtime, payroll taxes, etc.
In California, The Issue Is Control

• Courts in California look at several factors, but the main test as to whether a driver is an independent contractor or employee is whether the Company has the right to control the details of the drivers’ work
Factors In Determining Control

• Are the Operators/Drivers acting as business owners
• How does the business opportunity present itself
• How do the ads read
• Factors Company considers in determining whether someone can be Operator/Driver: Interview? Job application? References?
Factors In Determining Control

• What is explained to the prospective Operator/Driver when he seeks the business opportunity
• Writing explaining the business opportunity and that the Operators/Drivers are handling their own business
• Native tongue
Rules and Regulations For Operator/Drivers

• Airport Regulations: Company may follow airport regulations and restrictions without jeopardizing independent contractor status.

• PUC regulations: Company must comply with these, and doing so does not demonstrate control.

• Do not place further restrictions on what the airports and PUC require.
Effect on Airports

• Allowed to put in rules and regulations that see fit
• Can require vans to be readily identified with the company: color scheme, logos, etc.
• Can require Operators/Drivers to wear uniforms
• Can require vans to have certain capacity
• Can put in regulations regarding the amount of laps drivers can take
Effect on Airports, continued

- Can require training so that the Operators/Drivers know rules and regulations for airport
- Can require the Operators/Drivers wait in a specified location at the airport
- Can require the vans be subject to routine maintenance
Signs Operator/Driver is an Independent Contractor

- Can plan own routes
- Can decide when to work
- Can purchase more vans and have others drive those vans for his financial gain
- Can drive for other shuttle companies; not exclusive
- Can choose where to line up at airport
- Can turn down fares without punishment
Other Indicators of Independent Contractor

• In transportation industry, Courts have held these factors to indicate independent contractor:
  • Operators/Drivers can solicit business
  • Operators/Drivers provide own work tools—vans, GPS, cellphones, maps
  • Can have other Operators/Drivers fill in for them
  • Do Operators/Drivers have their own LLC.
  • Can use the vans for own personal reasons
  • Can obtain fares from sources other than dispatch
  • Company up front that it is a business opportunity
Things For Companies to Avoid

- Do not have penalties for Operators/Drivers who turn down fares
- Lock outs
- Do not force Operators/Drivers to accept fares
- Do not have a disciplinary process or points system
- If dispatch by third-party company, do not let dispatch threaten penalties
- Inconsistent tax filings – No W-2s, etc.
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WILLIAM O. STEIN is a Member of the Firm in the Litigation and Labor and Employment practices in the firm's Los Angeles office.

Mr. Stein's experience includes the following:

- Represents employers before state and federal courts, arbitrators, and administrative agencies in all aspects of employment litigation, including wrongful termination, sexual harassment, and discrimination actions
- Prosecutes and defends complex business disputes, including unfair competition and trade secret actions

Some of Mr. Stein's recent representative matters include:

- Successfully defended a sports apparel client in arbitration on claim of disability discrimination
- Won summary judgment for medical company on claim for sexual harassment
- Won summary judgment on claims for pregnancy discrimination and retaliation for international cosmetics company
- Won summary judgment for pharmaceutical company on claims for disability discrimination and retaliation
- Won summary adjudication for transportation company on claims for sexual harassment, racial discrimination and harassment, wrongful termination, and defamation
- Successfully defended pharmaceutical company in arbitrations arising out of a severance plan
- Won summary judgment for a pharmaceutical company on claims for wrongful termination and violation of ERISA
- Successfully defended communications company in arbitrations regarding discipline and termination under collective bargaining agreement
Won summary judgment for credit card/payment processing company on claims for breach of contract and negligence

Won summary adjudication for transportation company on claim of disability discrimination

Mr. Stein’s previous experience includes clerking for the Honorable Robert J. Kelleher in the United States District Court, Central District of California, and serving as counsel to the Webster Commission which investigated the Los Angeles Police Department’s policies and response to the Los Angeles Riots in 1992.

Mr. Stein has been named a "Super Lawyer" for Southern California in 2009 and 2010.

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DAVID JACOBS is a Member of the Firm in the Litigation and Labor and Employment practices. Based in the firm's Los Angeles office, where he serves as the Los Angeles Managing Shareholder, Mr. Jacobs represents clients nationwide. He concentrates his practice on business litigation, employment law, intellectual property, and First Amendment issues.

Mr. Jacobs represents, and has represented, clients in a wide range of industries, including publishing, entertainment (including film production companies, studios and television networks), financial services, high-tech, food marketing, and health care. A significant part of his practice is devoted to counseling and representing magazine and book publishers and other media companies on issues such as:

- Copyright
- First Amendment rights (defamation, reporter's privilege and access, pre-publication review, and privacy/right of publicity)
- Trademarks
- Unfair competition (Lanham Act and state unfair competition laws)
- Artist/manager disputes
- Contracts
- Trade secret theft
- Restrictive covenants

Many of Mr. Jacobs's cases involving copyright infringement, defamation, and First Amendment issues have resulted in reported decisions. One of the most recent is Mile Marker, Inc. v. Petersen Publishing Co., Inc., 811 So.2d 841 (Fla. 4th DCA 2002), in which Mr. Jacobs successfully defended Petersen's 4Wheel & Off-Road magazine against a claim of defamation over a product comparison article. Some of his other reported decisions include:
Mr. Jacobs also counsels and litigates in all aspects of employment law, including race, sex, age and disability discrimination, sexual harassment, and wrongful termination. He is equally experienced in litigating complex business disputes involving:

- Breach of fiduciary duty
- Breach of indemnity agreements
- Securities cases
- Real estate matters
- Fraud actions
- Breach of contract
- Commercial leases
- Corporate restructuring issues
- California health care issues

In addition to appearing before federal and state courts, Mr. Jacobs has represented clients in numerous AAA and JAMS arbitrations on such diverse matters as real estate transactions, trade secret theft, fraud, and corporate dissolution, and has represented EBG financial services clients in FINRA arbitrations.

Mr. Jacobs is a frequent speaker on trade secret theft and privacy issues.

Mr. Jacobs has served since 2009 as Co-Chair of the Employment Law Committee of the Media Law Resource Center.
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