

Stradley Ronon Stevens & Young, LLP
2005 Market Street
Suite 2600
Philadelphia, PA 19103-7018
215.564.8000 Telephone
215.564.8120 Facsimile
www.stradley.com

With other offices in:
Washington, D.C.
New York
New Jersey
Illinois
Delaware



www.meritas.org

*Our firm is a member of Meritas.
With 183 top-ranking law firms
spanning 92 countries, Meritas
delivers exceptional legal knowledge,
personal attention and proven
value to clients worldwide.*

Information contained in this publication should not be construed as legal advice or opinion or as a substitute for the advice of counsel. The enclosed materials may have been abridged from other sources. They are provided for educational and informational purposes for the use of clients and others who may be interested in the subject matter.

Copyright © 2019
Stradley Ronon Stevens & Young, LLP
All rights reserved.

New Contractor Classification Win for Employers

The U.S. Department of Labor (DOL) gave a win to employers in a new, business-friendly Wage and Hour Opinion Letter (https://www.dol.gov/whd/opinion/FLSA/2019/2019_04_29_06_FLSA.pdf). The Opinion Letter examined classification of workers as independent contractors versus employees.

“An important role of the U.S. Department of Labor is to ensure that employers who want to do the right thing have clear compliance assistance,” said Keith Sonderling, Acting Administrator of the DOL’s Wage and Hour Division. “Today, the U.S. Department of Labor offers further insight into the nexus of current labor law and innovations in the job market.”

The DOL concluded that “as a matter of economic reality” workers for a virtual marketplace company operating in the “on-demand” or “sharing” economy were appropriately classified as independent contractors. The Opinion Letter offers critical, detailed guidance to virtual marketplace companies seeking to continue independent contractor classifications.

The Opinion Letter also offers a roadmap for every employer. The DOL looked to the “circumstances of the whole activity,” as opposed to prior guidance emphasizing worker day-to-day activities. Highlighting economic independence as the key marker of independent contractor status, the DOL cited six factors in its fact-specific analysis:

- The nature and degree of the potential employer’s control;
- The permanency of the worker’s relationship with the potential employer;
- The amount of the worker’s investment in facilities, equipment or helpers;
- The amount of skill, initiative, judgment or foresight required for the worker’s services;
- The worker’s opportunities for profit or loss; and
- The extent of integration of the worker’s services into the potential employer’s business.

Like the DOL, the National Labor Relations Board (NLRB) recently returned to a more business-friendly approach (<https://www.nlr.gov/news-outreach/news-story/>

[nlrb-returns-long-standing-independent-contractor-standard](#)) to contractor status.

The recent actions by the DOL and NLRB represent victories for employers seeking to operate in the modern economy. Employers should review the new DOL and NLRB opinions in connection with Internal Revenue Service Guidance (<https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>), additional state law requirements, and advice from legal and tax advisors.



Jonathan F. Bloom



A. Nicole Stover

For more information, contact Jonathan F. Bloom at 215.564.8065 or jbloom@stradley.com or A. Nicole Stover at 856.321.2418 or nstover@stradley.com.

Stradley Ronon's Employment & Labor Practice Group

Jonathan F. Bloom, chair	jbloom@stradley.com	215.564.8065
Danielle Banks	dbanks@stradley.com	215.564.8116
Chelsea Biemiller	cbiemiller@stradley.com	215.564.8550
Adam D. Brown	abrown@stradley.com	215.564.8729
Joseph W. Catuzzi	jcatuzzi@stradley.com	215.564.8680
Penelope Cilluffo	pcilluffo@stradley.com	484.323.6432
Kristen M. Gibbons Feden	kfedden@stradley.com	215.564.8076
Adriel J. Garcia	agarcia@stradley.com	215.564.8022
Samantha Kats	skats@stradley.com	484.323.1354
Elizabeth A. Kuschel	ekuschel@stradley.com	215.564.8539
William E. Mahoney Jr.	wmahoney@stradley.com	215.564.8059
Francis X. Manning	fmanning@stradley.com	856.321.2403
John J. Murphy III	jmurphy@stradley.com	215.564.8019
Corey S. D. Norcross	cnorcross@stradley.com	215.564.8742
Michael D. O'Mara	momara@stradley.com	215.564.8121
James F. Podheiser	jpodheiser@stradley.com	215.564.8111
Ellen Rosen Rogoff	erogoff@stradley.com	215.564.8058
Amy E. Sparrow	asparrow@stradley.com	484.323.1353
A. Nicole Stover	nstover@stradley.com	856.321.2418