

Contingent Workforce



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The workforce is changing. The prevalence of gig workers, independent contractors, staffing agency relationships, and other types of nonemployee workers creates legal challenges that did not exist 10 years ago. Claims of independent contractor misclassification and joint employment are rampant, and the question of "Who is my employee?" is more difficult than ever to answer. Legal compliance in this new environment requires particularized experience in this niche of "non-employment" law.

The answers are in reach. Our Contingent Workforce team provides comprehensive, practical and customized strategies that reduce risk and position clients to advance their business objectives, now and in the future. We take a multidisciplinary approach, which draws on the experience of attorneys from our labor and employment, tax, employee benefits, government relations, corporate transactions, intellectual property, data privacy, immigration, and other practices.

What the Contingent Workforce Team Can Do For You

The stakes are high. If nonemployee workers are deemed to be your company's employees (or joint employees), then your company may be held liable for having failed to comply with all the laws that apply to employees. These may include laws relating to tax, benefits, employment, unemployment, workers' compensation, and more. Equally important, joint employment risks may exist in certain relationships, and our team helps to identify and manage those risks, including through strategically drafted contract clauses.

The issue is complex. The tests for worker classification vary by law, by state and sometimes by industry. A multistate business may be subject to dozens of different tests for determining whether a worker is that business's employee. There is no one-size-fits-all solution.

The rules are changing. States are passing new laws, and regulatory agencies and judges are changing their interpretations of existing laws. Our team is following each new development, and we help our clients prepare for what may emerge next.

Areas of Counsel

We counsel businesses regarding:

- Compliance (nationwide, federal, state and local).
- Independent contractor misclassification.
- Joint employment.
- Contracts and vendor agreements.
- Employee and nonemployee benefits and perquisites.
- Employee classification.
- Risk management.
- Tax strategies.
- Transactions.

We represent our clients in disputes, including:

- Litigation.
- Class and collective actions.
- Agency disputes.
- Investigations (e.g., DOL, IRS, state agencies, etc.).
- Arbitration and mediation.

- National Labor Relations Act proceedings.
- Private Attorneys General Act claims.
- Tax controversies.
- Tax audits, including Form 1099 and state law audits.

We have a broad range of industry experience, including:

- Communications.
- Employment.
- Energy.
- Entertainment.
- Healthcare/medical.
- Hospitality.
- Information technology.
- Insurance.
- Manufacturing.
- Media.
- Real estate.
- Retail and e-retail/e-commerce.
- Technology.
- Transportation.

Select experience



Developed customized programs and agreements for retention of independent contractors by large nationwide retailers, insurers, installers, property management companies, and other industries.



Advised clients on Affordable Care Act compliance, including whether and how to count individual independent contractors and vendor-supplied labor.



Drafted clauses and agreements with suppliers of non-employee labor to minimize risks related to misclassification and joint employment.



Enabled a public company to assemble and safely contract with a fleet of independent operators, as self-employed entrepreneurs, by arranging for the entrepreneurs to have access to a free-standing tax-qualified plan program and a free-standing fully insured group health insurance plan program.



Redrafted and modified employee benefit plans to protect them from exposure to claims by non-employee workers.



Obtained dismissal of class action filed by floor covering installers against a nationwide retailer, alleging independent contractor misclassification, and failure to comply with federal background check laws.



Obtained dismissal and settlement with no dollars paid in multiple California and other state class actions filed by classes of property inspectors, based on defense that centered around creative, customized contractual clauses drafted by our attorneys.



Avoided class certification and obtained extremely favorable settlement in a series of FLSA putative collective action cases alleging cable installers were misclassified as independent contractors instead of as employees.

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