Insight 2019: Centralized Control, Decentralized Execution

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Handout for Workforce Disruption Panel Discussion

1. PowerPoint Slides
2. Testimony Before the Senate HELP Subcommittee, "Exploring the 'Gig Economy' and the Future of Retirement Savings"
3. Camille Olson Biography

Workforce Disruption

How Independent Work is Challenging Traditional Employment Structures

April 11, 2019

TRADITIONAL BUSINESS MODELS…

Have Historically Included "Non-Traditional" Worker Relationships

Companies Receiving Services from an Independent Company's Employees

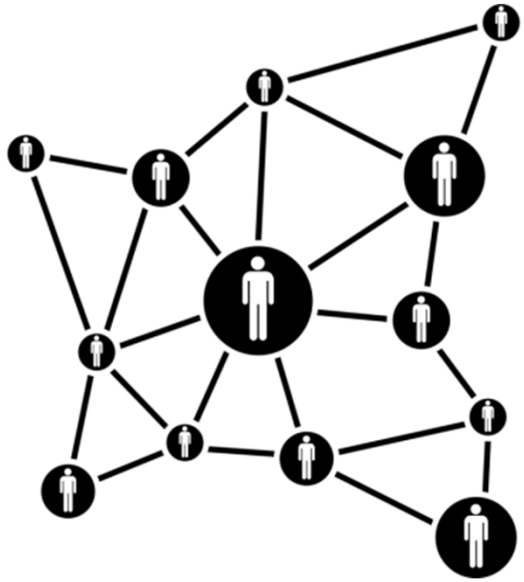
- Franchisor: Franchisee Relationships
- Clients of Staffing Companies
- Companies Outsourcing Non-Core Functions to "Contracting Companies"

Companies Contracting for Results Directly With Non-Employee Workers

- Independent Contractors
- Consultants

An estimated **54-68 million Americans** are working independently—as freelancers, part-timers, consultants, contractors, and the self-employed.

Fueled by technology, information, and the desire for flexibility …



BENEFITS OF INDEPENDENT CONTRACTOR STATUS

Contingent work provides freedom from traditional workplace requirements:

- Hours of work
- Hourly rates
- Provision of personal services
- Inability to simultaneously compete in the marketplace

Independent contractors cite advantages:

- Write-offs of all business expenses
- Retention of intellectual property rights
- Freedom to be their own boss
- Freedom to self-determine financial opportunities by working for multiple entities

INDEPENDENTS SAY IT WAS THEIR CHOICE AND ARE SATISFIED

Most independents (74%) plan to **stay the course** as an independent (61%) or build a larger business (13%)

6.5 out of 10 independents say working independently was **their choice completely**

3.2 million independents **earned more than $100k**, up from 1.9 million in 2011

Source: MBO Partners State of Independence 2017

WORKER STATUS TESTS

- Common Law Agency/Right-to-Control Test
- ABC Test
- Economic Realities Test

UNCERTAINTY IN WORKER STATUS

2015 DOL Administrator Interpretation Withdrawn on June 7, 2017

NLRB Test: Uncertainty Created by *Browning-Ferris* and *Hy-Brand*

DOL HOME / NEWSROOM / NEWS RELEASES AND BRIEFS

News Release

US SECRETARY OF LABOR WITHDRAWS JOINT EMPLOYMENT, INDEPENDENT CONTRACTOR INFORMAL GUIDANCE

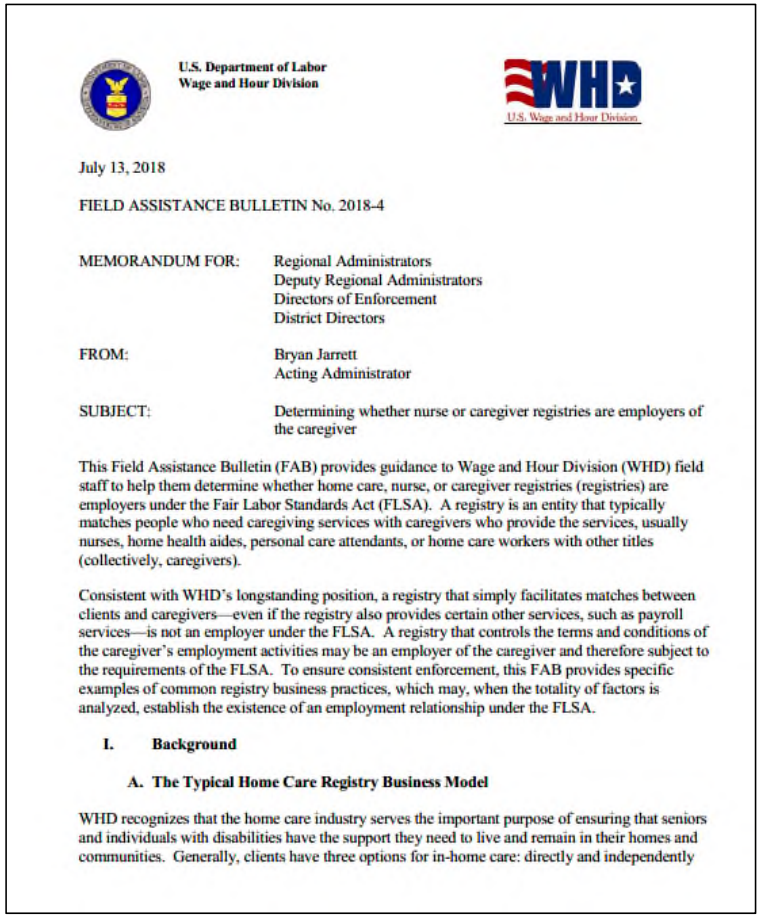
WASHINGTON – U.S. Secretary of Labor Alexander Acosta today announced the withdrawal of the U.S. Department of Labor's 2015 and 2016 informal guidance on joint employment and independent contractors. Removal of the administrator interpretations does not change the legal responsibilities of employers under the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act, as reflected in the department's long-standing regulations and case law. The department will continue to fully and fairly enforce all laws within its jurisdiction, including the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act.

OPA News Release: 06/07/2017

DOL GUIDANCE

DOL Field Assistance Bulletin

- Provides guidance to DOL Wage and Hour Division field staff as to the correct classification of home care, nurse, or caregiver registries under the FLSA
- Confirms that the DOL continues to view a registry that simply refers caregivers to clients but controls no terms or conditions of the caregiver's employment activities as outside the purview of the FLSA
- Provides specific examples of common registry business practices that may establish the existence of an employment relationship under the FLSA



U.S. Department of Labor
Wage and Hour Division

WHD
U.S. Wage and Hour Division

July 13, 2018

FIELD ASSISTANCE BULLETIN No. 2018-4

MEMORANDUM FOR: Regional Administrators
Deputy Regional Administrators
Directors of Enforcement
District Directors

FROM: Bryan Jarrett
Acting Administrator

SUBJECT: Determining whether nurse or caregiver registries are employers of the caregiver

This Field Assistance Bulletin (FAB) provides guidance to Wage and Hour Division (WHD) field staff to help them determine whether home care, nurse, or caregiver registries (registries) are employers under the Fair Labor Standards Act (FLSA). A registry is an entity that typically matches people who need caregiving services with caregivers who provide the services, usually nurses, home health aides, personal care attendants, or home care workers with other titles (collectively, caregivers).

Consistent with WHD's longstanding position, a registry that simply facilitates matches between clients and caregivers—even if the registry also provides certain other services, such as payroll services—is not an employer under the FLSA. A registry that controls the terms and conditions of the caregiver's employment activities may be an employer of the caregiver and therefore subject to the requirements of the FLSA. To ensure consistent enforcement, this FAB provides specific examples of common registry business practices, which may, when the totality of factors is analyzed, establish the existence of an employment relationship under the FLSA.

I. Background

A. The Typical Home Care Registry Business Model

WHD recognizes that the home care industry serves the important purpose of ensuring that seniors and individuals with disabilities have the support they need to live and remain in their homes and communities. Generally, clients have three options for in-home care: directly and independently

LATEST NLRB RULING

2019 SuperShuttle Decision

- Reaffirms Board's adherence to the traditional common-law test
- Overrules 2014 *FedEx Home Delivery* decision that modified the applicable test for determining independent contractor status by severely limiting the significance of a worker's entrepreneurial opportunity for economic gain

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

SuperShuttle DFW, Inc. *and* Amalgamated Transit Union Local 1338. Case 16–RC–010963

January 25, 2019

DECISION ON REVIEW AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN, KAPLAN, AND EMANUEL

The issue in this case is whether franchisees who operate shared-ride vans for SuperShuttle Dallas-Fort Worth are employees covered under Section 2(3) of the National Labor Relations Act or independent contractors and therefore excluded from coverage. On August 16, 2010, the Acting Regional Director issued a Decision and Order in which she found, based on the Board's traditional common-law agency analysis, that the franchisees in the petitioned-for bargaining unit were independent contractors, not statutory employees. Accordingly, she dismissed the representation petition at issue.

Thereafter, pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Union filed a request for review of that decision. On November 1, 2010, the Board granted the Union's request for review. The Union and the Employer filed briefs on review, and the AFL–CIO filed an amicus brief. The Employer also filed a response to the AFL–CIO's brief.

Before the Board issued its decision on the Union's request for review, it issued its decision in *FedEx Home Delivery*, 361 NLRB 610 (2014) (*FedEx*), enf. denied 849 F.3d 1123 (D.C. Cir. 2017) (*FedEx II*), in which a Board majority purportedly sought to "more clearly define the analytical significance of a putative independent contractor's entrepreneurial opportunity for gain or loss." Id. at 610. The Board majority explicitly declined to adopt the holding of the United States Court of Appeals for the District of Columbia Circuit in a prior *FedEx* case[1] "insofar as it treats entrepreneurial opportunity (as the court explained it) as an 'animating principle' of the inquiry." *FedEx Home Delivery*, 361 NLRB at 610. Rather, the Board found that entrepreneurial opportunity represents merely "one aspect of a relevant factor that asks whether the evidence tends to show that the putative contractor is, in fact, *rendering services as part of an independent business*." Id. at 620 (emphasis in original).

In so doing, the Board significantly limited the importance of entrepreneurial opportunity by creating a new factor ("rendering services as part of an independent business") and then making entrepreneurial opportunity merely "one aspect" of that factor. As explained below, we find that the *FedEx* Board impermissibly altered the common-law test[2] and longstanding precedent, and to the extent the *FedEx* decision revised or altered the Board's independent-contractor test, we overrule it and return to the traditional common-law test that the Board applied prior to *FedEx*, and that the Acting Regional Director applied in this case.

Having carefully reviewed the entire record, including the parties' briefs and the amicus brief on review, and applying the Board's traditional independent-contractor analysis, we affirm the Acting Regional Director's decision and her finding that the franchisees are independent contractors. Accordingly, we dismiss the petition.

I. LEGAL FRAMEWORK

A. The Common-Law Agency Test

Section 2(3) of the Act, as amended by the Taft-Hartley Act in 1947, excludes from the definition of a covered "employee" "any individual having the status of an independent contractor." 29 U.S.C. § 152(3). The party asserting independent-contractor status bears the burden of proof on that issue. See, e.g., *BKN, Inc.*, 333 NLRB 143, 144 (2001); accord *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 710–712 (2001) (upholding Board's rule that party asserting supervisory status in representation cases has burden of proof).

To determine whether a worker is an employee or an independent contractor, the Board applies the common-law agency test. *NLRB v. United Insurance Co. of America*, 390 U.S. 254, 256 (1968). The inquiry involves application of the nonexhaustive common-law factors enumerated in the Restatement (Second) of Agency §220 (1958):

> (a) The extent of control which, by the agreement, the master may exercise over the details of the work.
>
> (b) Whether or not the one employed is engaged in a distinct occupation or business.
>
> (c) The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision.
>
> (d) The skill required in the particular occupation.

[1] *FedEx Home Delivery v. NLRB*, 563 F.3d 492, 497 (D.C. Cir. 2009) (*FedEx I*).

[2] As the Board noted in *Roadway Package Systems, Inc.*, 326 NLRB 842, 849 (1998), Supreme Court cases "teach us not only that the common law of agency is the standard to measure employee status but also that we have no authority to change it."

LITIGATION UPDATE

The Biggest Wage & Hour Settlements in 2016 and 2017 Independent Contractor Misclassification Cases

#1 in 2017: April 2017 – Final approval granted of **$227M** settlement with 12,000 drivers in 20 states alleging wage and hour violations for misclassification of drivers as independent contractors

#1 in 2016: June 2016 – Final approval granted of **$226M** settlement with California drivers alleging wage and hour violations for misclassification of drivers as independent contractors

#2 in 2016: April 2016 – Uber and class of CA and MA drivers tentatively settled wage and hour misclassification suit for up to **$100M**, which would have been #2 in 2016 had the court approved the settlement (*re-submitted in March 2019*)

#4 in 2017: March 2017 – Final approval granted of **$27M** settlement with California drivers alleging wage and hour violations for misclassification of drivers as independent contractors

SHARING ECONOMY MISCLASSIFICATION CASES AND THE RELEVANCE OF ARBITRATION

July 2015
Handy's **Motion to Compel Arbitration** on California Labor Code claim granted

September 2016
Parties agree to stay case pending First Circuit resolution of **enforceability of class arbitration waivers**. Motion to Stay First Circuit case pending Supreme Court ruling on issue in arbitration trilogy is pending

handy

November 2015
Court granted **Motion to Compel Arbitration** in California and Nationwide minimum wage claim

February 2016
Court granted **Motion to Compel Arbitration** in New York and Nationwide minimum wage claim

Instacart

March 2015
Summary Judgment denied on independent contractor status in a claim for California Labor Code violations

March 2017
$27M in California case granted final approval settlement

lyft

SHARING ECONOMY MISCLASSIFICATION CASES AND THE RELEVANCE OF ARBITRATION AND FORUM

March 2015
Summary Judgment denied on independent contractor status in claim for California Labor Code violations

June 2015
California Labor Commissioner rules **driver was an employee of Uber**

September and December 2015
California federal judge certifies class of Uber drivers on tips and unreimbursed expenses claims

December 2015
Florida Department of Economic Opportunity finds **Uber driver to be properly classified as an independent contractor** for unemployment compensation purposes

August 2016
Up to $100M settlement for MA and CA drivers rejected

September 2016
Ninth Circuit reverses California district court denial of Uber's motion to compel arbitration

November 2016
Five California federal court cases are stayed pending Ninth Circuit's ruling on interlocutory appeals involving **arbitration agreement enforceability** in *O'Connor* and related cases

February 2017
Florida state court **affirms finding on IC status of Uber drivers** Florida Department of Economic Opportunity

April 2018
Eastern District of Pennsylvania concludes **the totality of circumstances weighed in favor of contractor status for UberBlack drivers** for minimum wage and overtime claims under economic realities test

Historical Studies on Extent of Arbitration:

- *GAO Survey (1995):* Companies with mandatory arbitration agreements relatively uncommon (7.6%)
- *Telecommunications Industry Survey (2003*): Larger companies more likely to use require arbitration (14.1% of employers versus 22.7% of employees)

Survey of Private Sector Employers (March to July 2017):

- More than half of employees subject to mandatory arbitration (56.2%)
- Larger companies—with more than 1,000 employees—still more likely to require arbitration agreements (65.1%)
- Nearly half of employees subject to mandatory arbitration agreements are also subject to class action waivers (41.1%)

***BUT** do mandatory arbitration agreements that require class action waivers violate employees' rights under the NLRA to engage in protected concerted activity?*

October 2015
Sixth Circuit says ***NO*,**
employer did not commit unfair labor practice by requiring employees to sign arbitration agreements with class action waivers

May 2016
Seventh Circuit says ***YES*,**
mandatory class action waivers violate employees' rights under the NLRA to seek collective, representative, or class remedies

August 2016
Ninth Circuit says ***YES*,** requiring employees to sign arbitration agreement is permissible but **mandatory class action waivers are not enforceable under the FAA** as interfering with NLRA rights

May 2018
United States Supreme Court concludes ***NO*, the NLRA does not present a legal barrier to the general enforcement of arbitration agreements with class action waivers** in 5-4 decision in *Epic Systems Corporation*

SHARING ECONOMY MISCLASSIFICATION CASES AND THE RELEVANCE OF ARBITRATION AND FORUM

August 2018
California legislature says FAA does not apply before an arbitration agreement exists and **passes AB 3060 to criminalize the act of requiring mandatory arbitration agreements without opt-out provisions** as regulating pre-agreement behavior

September 2018
California governor **vetoes AB 3060 since it "plainly violates federal law"**

September 2018
Ninth Circuit determines **validity of Uber's arbitration agreements and class action waiver** and rejects arguments that a plaintiff can opt out on behalf of a class

September 2018
Kentucky Supreme Court becomes first state to hold that **the FAA does not prohibit state anti-discrimination statute that generally voids all agreement (not just arbitration agreements) diminishing an employee's rights** since it does not discriminate against arbitration

October 2018
Enacted legislation in **New York prohibits "mandatory arbitration to resolve any allegation or claim of an unlawful discriminatory practice of sexual harassment"** (though mandatory arbitration of other claims is permitted)

SHARING ECONOMY MISCLASSIFICATION CASES
AND THE RELEVANCE OF ARBITRATION AND FORUM

March 2019
Following the Ninth Circuit's September 2018 determination that **Uber's arbitration agreements and class action waivers were valid**, MA and CA drivers **seek approval of new $20M settlement**

Rejected $100M Settlement in 2016

- As class waivers had not been enforce by the court, proposed settlement included **~385,000** drivers
- On average, $390 recovery per driver
    - Class action settlement terms found fair
    - But approval denied based on allocation of only $1M in penalties for State of California under private attorneys general claim (settled separately in January 2018 in another lawsuit for $7.75M)

Proposed $20M Settlement in 2019

- With Ninth Circuit confirming validity of class waivers, proposed settlement would include **~13,600** drivers only
- On average, $2,206 recovery per driver
    - Arbitration agreements and class action waivers exclude the other ~96.5% of drivers
    - Increase in average recovery per driver reflects, in part, June 2018 California Supreme Court decision altering standards for determining independent contractor status

SHARING ECONOMY MISCLASSIFICATION CASES…*"THE ANSWER IS IN THE DETAILS"*

September 23, 2015: California class action complaint filed against GrubHub by delivery driver Raef Lawson alleging claims for unreimbursed business expenses, minimum wage violations, and unpaid overtime

Court denies GrubHub's MSJ on employee status and motion to certify the class

September – November 2017 – Bench trial

February 8, 2018: Northern District of California Judge Corley finds Lawson is an independent contractor, case dismissed

November 9, 2018: Appeal of contractor ruling and denial of class certification; appealed to 9th Circuit

February 6, 2018: Two days earlier, the California Supreme Court hears oral argument in a separate case, *Dynamex West Operations, Inc.*, and expresses its curiosity in reforming the applicable classification test

April 30, 2018: *Dynamex* decision finds that California Wage Order claims must apply ABC test, rather than common law test emphasizing the right to control work

November 28, 2018: Northern District of California Judge Corley acknowledges bench trial ruling likely would differ under *Dynamex* and defers to Ninth Circuit to determine retroactivity

SHARING ECONOMY JOINT EMPLOYER CASES …MORE LITIGATION AND CREATIVE THEORIES

October 2011
Carrillo v. Schneider
Workers employed by staffing agencies that contracted with Schneider (a logistics company) to work in a Wal-Mart warehouse filed suit for alleged W&H violations

January 2013
Third amended complaint filed adding Walmart as a joint employer defendant and a conspiracy to violate California labor code as an additional cause of action

January 2014
Both Schneider's and Walmart's motions for summary judgment were denied

May 2014
Following the MSJ denial, parties reached **$21M** settlement

January 2017
Delivery drivers employed by Companies that contract with Amazon for goods delivery file an amended complaint alleging Amazon as a joint employer in a misclassification suit for unpaid overtime and minimum wage under the FLSA and IL law.

The Life Cycle of an Independent Contractor

Don’t assume all relationships can be structured as independent contractor relationships

- Some can
- Some can’t
- Can the company give up the right to control the manner and means?
- Can the worker show signs of operating as a business?

Classification Tests

- Restatement (Second) of Agency Test
- ABC Test: control, outside premises or outside type of work company provides, and evidence of independence
- Economic Realities Test

10 Common Law Factors of Independent Contractor Status:

1. Extent of Control over the Details of Work?
2. Person Engaged In a Distinct Business?
3. Work Typically Done By A Specialist, Without Supervision?
4. Skills Required?
5. Who Provides Equipment, Supplies, and Workspace?
6. Length of Relationship between Company and Worker
7. Method of Payment for Services (by result or time)?
8. Is Work Part of Regular Business of the Company?
9. Intent of Parties regarding Relationship Created
10. Whether the Company is in a Business

- Advertisements for Openings
- SOQs
- Questionnaires
- Business Plans
- Contracting Process
- Background Checks
- Record Keeping
- Contractor “References”

All relationships must be governed by an agreement which:

- Accurately describes requirement of company and contractor
- Has an end date
- Cannot be terminated except for material breach or on written notice (of no less than 30 days)
- Confirms contractor's right to compete
- Explicitly states workers decline any offer of employee benefits

Remember: Contracts don't win cases; Contracts can lose them if they either:

- Retain the Right to Control
- Don't Contain Language required by statute

Let the Contract Live

- Develop a working contract managers understand
- Manager training?
- Develop an overall set of documents, practices and policies

- Amendments
- Addenda
- Evidence of Negotiations
- Contractor Negotiation of Charges and Credits
- Access to Medical and Other Benefits
- Record Keeping
- Waiver & Release of Prior Claims
- Limited Right to Contest Accuracy of Payments/Charges

- Contractor Payments
- Contractor Expenses
- Contractor Leasing of Tools and Equipment
- Contractor Invoicing
- IRS Form 1099
- Dual Function Workers

- Pursuant to Terms
- Written Evidence of Same
- Final Payments

- Secondary Defenses to Employment Protections
- Mandatory Arbitration Agreements (with Class Waivers)
- *Gattuso* Defense

GIG ECONOMY – RECENT FEDERAL LEGISLATIVE & ADMINISTRATIVE DEVELOPMENTS

Independent Contractors with Benefits?	The Entrepreneurial Economy	Separate or Joint Employers?	NLRB Request for Input
• Exploring the Gig Economy & The Future of Retirement Savings • 2/6/18 Senate Hearing • Beyond the Gig Economy • What's Next?	• Secretary of Labor Acosta • BLS 2018 Study Released • Field Assistance Bulletin on Contractor Status of Caregivers	Temporary Relief – The Agencies – Joint Employer Test – NLRB & DOL	• Is misclassification an Unfair Labor Practice? • *SuperShuttle* Decision

GIG ECONOMY – RECENT STATE & LOCAL LEGISLATIVE DEVELOPMENTS

Independent Contractors with Benefits?	Independent Contractors with Organizing Rights?	State Law Statutory Non-Employees
State of Washington State of New Jersey	City of Seattle, Washington	Arizona Marketplace Exemption

TRUMP ADMINISTRATION AND CONGRESS TO TACKLE GIG ECONOMY THIS SPRING

Springboard for New Federal Workplace Legislation Applicable to Contingent Workers

- Trump Administration?
- 2/6/18 Senate HELP Hearing on the Gig Economy
- February 2018 Labor Secretary Acosta Speaks out on Need to Keep Pace with Work in a Modern Economy

- ✓ Continued focus by industry groups to modernize employment laws to apply to gig workers:
  - Retiree Benefits
  - Contractor-or-Employee Definition

THANK YOU

Statement of the U.S. Chamber of Commerce

ON: **Exploring The 'Gig Economy' And The Future Of Retirement Savings**

TO: **United States Senate Committee on Health, Education, Labor and Pensions, Subcommittee on Primary Health and Retirement Security**

BY: **Camille Olson, Partner, Seyfarth Shaw LLP**

DATE: **February 6, 2018**

1615 H Street NW | Washington, DC | 20062

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

CAMILLE A. OLSON
ON BEHALF OF THE U.S. CHAMBER OF COMMERCE

BEFORE THE UNITED STATES SENATE
COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS
SUBCOMMITTEE ON PRIMARY HEALTH AND
RETIREMENT SECURITY

Exploring The 'Gig Economy' And The Future Of Retirement Savings

February 6, 2018

Good afternoon; thank you Senator Enzi, Ranking Member Sanders and other Members of the Subcommittee for the opportunity to participate in today's Roundtable.

I am Camille Olson, a partner in the law firm Seyfarth Shaw LLP.[1] I appear today on behalf of the U.S. Chamber of Commerce; the Chamber represents over three million businesses and organizations. As the gig economy has grown, the Chamber's Employee Benefits Committee and Technology Engagement Center (C_TEC) have been focusing on the issues before us and exploring means to rationalize our regulatory and legal system to lessen the constraints on the growth of this vital new economy.[2] Chamber members support the entrepreneurial spirit of the gig economy and the creation of opportunities to encourage all workers to save for retirement within the existing private voluntary system. The Chamber encourages Congress to work with this developing economic activity and enhance the flexibility, portability,[3] and certainty of the retirement system to allow independents to obtain retirement security. Simply put, there should be a focus on enhancing the ability of the participants in this new economy to benefit from their entrepreneurial activities and establish a foundation for their own secure retirement.

Online platforms facilitate flexible work commitments, creating greater opportunities for the employed and self-employed to increase their earnings potential through a partnership. Gig companies often provide independent workers the opportunity to optimize special skills and

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[1] For over two decades, I have provided legal counsel to companies seeking to establish business opportunities in all 50 states with individuals in traditional independent contractor relationships, as well as to companies with independent worker relationships in the gig economy.

Seyfarth Shaw LLP attorneys Randel K. Johnson, Richard B. Lapp and Lawrence Z. Lorber assisted in the preparation of this statement, along with case assistant Kali Froh.

[2] "CTECIntelligence: Sharing Economy," U.S. Chamber of Commerce, http://ctecintelligence.com/ and http://ctecintelligence.com/reports/ctec-share-national-report.pdf.

[3] Portability is important for independents so that savings can be accumulated in a consistent and efficient manner. Particularly for a workforce that is highly mobile, the importance of having one account—versus several small accounts that could be lost or diminished by fees—is paramount.

talents as well as already-owned assets such as cars, trucks, vans and computers by monetizing these assets so that they can provide independent services.

Today, 40 million independent workers hold a prominent role in the US economy.[4] Independent workers are a mosaic of consultants, freelancers, and contractors working independently or with other independents to build businesses, develop their careers, pursue artistic or occupational passions, or supplement their incomes (occasional, part time and full time) with multiple gig companies, often at the same time.[5] It is estimated that within the next five years a majority of Americans will have worked as an independent worker.[6]

Companies that comprise the gig economy are diverse, with some companies focusing on specific areas and others encompassing a wide range of services.[7] Independent workers differ greatly in terms of the investments they leverage, the hours they and others work to support their gig engagements, and in their priorities in terms of being compensated in fees and/or some portion of their compensation being provided as retirement or other benefits. Some independents have access to retirement benefits through unrelated pre-existing employment relationships[8] or individual Keogh or IRA accounts,[9] while 33% of independents report a top challenge is planning for retirement.[10] These independent workers need financial and retirement education,[11] and access and assistance in creating, funding, and administering efficient retirement vehicle options. On the latter, Congress can be particularly important in creating retirement savings vehicles and incentives.

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[4] "The State of Independence In America, Rising Confidence Amid A Maturing Market," 2017 Report MBO Partners, https://www.mbopartners.com/uploads/files/state-of-independence-reports/StateofIndependence-2017-Final.pdf .

[5] 49% of independent workers report also having a full-time, traditional payroll-based job. *Id.* at 7. Likewise, one in five workers with payroll-based jobs engage in other independent work. *Id.*

[6] *Id.*

[7] Some gig economy companies focus on specific areas, such as Gigster (software engineering), Airbnb (short term accommodations), and Postmates (delivery service); while other companies encompass a wide range of services, such as Thumbtack (home, business, wellness, creative design), Uber and Lyft (ride sharing, food delivery), and Upwork (accounting, copy editing, personal fitness) as well as companies involved in commercial real estate, healthcare, legal services, customer services, logistics and management consulting.

[8] Recent research by Prudential found that 16% of gig economy independents have access to a retirement savings plan compared to 52% of full-time employees. "Gig Workers in America: Profiles, Mindsets and Financial Wellness," Prudential Financial, http://research.prudential.com/documents/rp/Gig_Economy_Whitepaper.pdf.

[9] Some independents prefer to maximize their immediate fees for results provided in lieu of benefits (which they may have access to through other personal or work relationships).

[10] "The State of Independence In America, Rising Confidence Amid A Maturing Market," 2017 Report MBO Partners, https://www.mbopartners.com/uploads/...reports/StateofIndependence-2017-Final.pdf.

[11] Retirement education should be encouraged and enhanced at the school, gig company and community levels.

Developing policies that promote a positive business environment, encourage innovation, and protect workers' financial futures while also preserving flexibility is an important and challenging balance for this subcommittee to strike.

A number of structural challenges currently inhibit gig economy independents from obtaining access to retiree benefits. For example, today independents cannot be offered benefits that are governed by the Employee Retirement Insurance Security Act of 1974 (ERISA), 29 U.S.C. § 1001 et seq. As a result, gig economy companies cannot include independents within ERISA plans offered to company employees, or even facilitate transfers into retirement plans for independents.

As important, under the existing law and regulatory framework, gig economy companies cannot even offer non-ERISA information or facilitate administratively or financially the retention by independents of employee retirement benefits without jeopardizing the legal status of their operational models. Many federal, state and local laws regulating the status of worker relationships effectively prevent those companies that treat workers as independents from providing those workers with access to even non-ERISA employee benefits without undermining the legal status of their business models.[12]

And, the vast majority of independents do not take advantage of existing self-initiating and self-funded and administered retirement vehicles of Keoghs and IRAs available to independents due to a lack of knowledge and education. In short, the current legal and regulatory scheme effectively discourages companies who utilize independent workers from offering retirement benefits. Without the availability of this assistance, it is not surprising that many independents have not otherwise obtained access to a vehicle to save for retirement.

The foundation to solving the impediments to a portable retirement benefit system for independents includes consideration of the following: (1) increasing the availability and access to retirement and financial education and information regarding existing retirement vehicles (including Keoghs and IRAs) available to independents; (2) allowing gig economy companies to provide benefit information to independents; (3) allowing gig economy companies to assist with the administration and facilitation of direct deposit of funds into retirement vehicles; (4) allowing gig economy companies to contribute to portable retiree benefits for the benefit of independents;

[12] The common law principles of agency solely determine, or guide the determination of, employment/independent contractor status under the vast majority of federal, state and local laws. In *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 323-24 (1992) the United States Supreme Court adopted the common law test for determining who qualified as an employee under ERISA. The Court concluded that agency law principles and common understanding require the conclusion that "the provision of employee benefits" by a service recipient is a relevant indicia of employment. *Id.* at 324. The Supreme Court's guidance that providing employee benefits to a worker is an indicia of employment has been incorporated into virtually all analyses of the legal status of workers. *E.g.*, "Employer's Supplemental Tax Guide," Department of the Treasury, Internal Revenue Service Publication 15-A (2017), https://www.irs.gov/pub/irs-pdf/p15a.pdf at 8 (explaining determination of worker classification considers "[w]hether or not the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay"); "Especially for Texas Employers," Texas Workforce Commission, http://www.twc.state.tx.us/news/efte/efte.pdf at 33 ("[A]n employer who provides benefits such as vacation and sick leave, health insurance, bonuses, or severance pay will almost inevitably be considered the employer of the workers.").

(5) promoting the development of flexible, portable retirement products and services with open platforms that allow for contributions from multiple organizations and participants; (6) providing independents monetary incentives to save for retirement; and (7) ensuring that gig economy companies' facilitation of retiree benefits education, administration and funding for independents does not negatively impact the independents' legal relationships with the gig companies.[13] These steps will serve to establish protected retirement sources for independent workers.

By considering flexible approaches to the availability, facilitation, administration and financial support of retiree benefits for independents engaged in the gig economy, we can support the financial future of these Americans, maximize our collective resources and further economic growth. On behalf of the United States Chamber of Commerce, I thank you for the opportunity to share some of our insights with you today.

[13] For example, California's Labor Code allows certain companies to provide workers' compensation benefits to independents without regard to their worker classification status as an employee or independent contractor, expressly noting that providing such benefits cannot be used as indicia of employment for any purpose. Cal. Lab. Code § 4157.

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Practices & Sectors

Labor & Employment

OFCCP & Affirmative Action Compliance

Complex Discrimination Litigation

Workplace Counseling & Solutions

Employment Law Training

Employment Litigation

Wage & Hour Litigation

Insurance

Social Media

California Wage & Hour Litigation

Appellate Advocacy

Government Compliance and Enforcement Actions

Wage & Hour Audit, Assessment, and Counseling

Franchise & Distribution Counseling and Litigation

Organizational Strategy and Analytics

HIPAA Privacy & Security

Hospitality

Government

Biography

Camille A. Olson is a partner at Seyfarth Shaw LLP, Co-Chair of its National Complex Litigation Practice Group, and National Chairperson of its Complex Discrimination Litigation Practice Group. She serves on the firm's National Labor and Employment Law Steering Committee and is the past National Chairperson of the Labor and Employment Practice Department. Since 2013, Ms. Olson has served as Chairperson of the United States Chamber of Commerce's Equal Employment Opportunity ("EEO") Subcommittee. For nearly 30 years, she has represented companies nationwide in all areas of litigation, with an emphasis on employment discrimination and harassment, wage and hour matters, and independent contractor status.

Ms. Olson's trial experience includes lead defense trial counsel in "bet the company" harassment, discrimination, independent contractor, contract, commercial, and wage and hour cases. She has also served as outside counsel and independent counsel to Boards of Directors and Executive Team Members in connection with internal investigations and highly sensitive litigation matters. She has litigated numerous discrimination cases through both successful summary judgment motions and favorable jury verdicts in the context of EEOC pattern and practice multi-plaintiff cases, reductions in force, individual terminations, and harassment allegations.

Ms. Olson's track record of success in trial practice reflects her strategic and incisive approach to every phase of litigation. Through focused discovery and dispositive motion practice, she exerts pressure on the opposition at each stage, up to and including trial. In numerous instances, Ms. Olson has achieved successful resolution for clients on the eve of trial -- and in a few cases during trial -- through sophisticated and creative motion practice. In the past five years, Ms. Olson has negotiated several confidential settlements in various stages of litigation on behalf of both high-profile executives and Fortune 100 companies in cases involving allegations of misconduct, systemic violations of regulatory or company policies, misappropriation of trade secrets, and severance issues as well as harassment and discrimination allegations.

Ms. Olson is the recipient of numerous accolades for her effective litigation style. In December of 2016, she was one of the recipients of the Financial Times' first Innovation in Collaboration Award for her trial work in *HP v. Oracle*. In June 2016, a California jury awarded HP $3.014 Billion in its contract dispute with Oracle, the largest jury verdict in California history.

Relations and Policy

Specialty Teams

Whistleblower Team

Employment Whistleblower Team

White Collar, Internal Investigations, and False Claims Team

False Claims

Corporate Internal Investigations

Workplace Whistleblower

Pay Equity Group

Transportation and Logistics Team

Chambers USA has recognized Ms. Olson as a top Labor & Employment lawyer, citing peers who describe her as a "*highly regarded partner known for representing employers in high-stakes disputes*," *"one of the finest lawyers in Chicago*," "*absolutely top-notch*," and a "*first-rate litigator*." Clients have said, *"I find her to be very impressive in her manner, her knowledge of the law, and her direct manner of representation of our interests*" and described her as "*very pragmatic and an excellent legal strategist*." One source highlighted her "*ability to produce a high-quality product in a very short time and to reduce complex issues into terms that are understandable for non-lawyers*" and praised her as an "excellent litigator." *Legal 500* has ranked her as a leading lawyer in Labor and Employment litigation, noted as a litigator who "always makes time" for her clients. She has been rated 5.0 out of 5 by Martindale-Hubble AV Preeminent. Ms. Olson was named one of the top 10 employment litigators in the country by *Legal 500*, which praised her 'superb representation' and named her 'one of the best employment litigators in the US,' and *Law360* named her an Employment Law MVP, one of only seven attorneys nationwide to be so named.

Recently, Inland Press Association named Ms. Olson as the recipient of its Ray Carlsen Distinguished Award; one of the Association's highest honors, the award recognizes "members who have distinguished themselves in service to the association and its affiliated foundation, who have been exemplary in service to their communities and their companies, and who deserve the recognition of their peers and colleagues." She was also featured in the inaugural edition of Chicago Crain's "Most Influential Women Lawyers in Chicago." Ms. Olson was included as one of the "Notable Women Lawyers in Chicago" by Chicago Crain's in 2018. Ms. Olson has been recognized annually as one of the Nation's Most Powerful Employment Attorneys by *Human Resource Executive* and *LawDragon*. She has been voted one of the Top Ten Women Business Lawyers in Illinois as well as one of 2014's Women Leaders in the Law, and in 2012 Ms. Olson was also elected to The Fellows of the American Bar Foundation. Ms. Olson has been recognized by *Chicago Magazine* as one of 2016's Top Attorneys in Illinois as well as one of the Top 50 Women Attorneys in Illinois. Ms. Olson has been recognized by Illinois Super Lawyers annually since 2005 and has appeared repeatedly in *Who's Who Legal* and has been named one of the 100 Most Powerful Employment Attorneys by *Human Resource Executive. Chambers USA* consistently rates her at the highest level, and recently noted: "Specializing in complex discrimination litigation, Camille Olson is 'just terrific.' Everything you hear about her is excellent and she handles the really cutting-edge stuff." *Chambers Global* has also described her as "one of the leading lawyers in the country" and "very bright, very experienced, and very tough."

Ms. Olson's celebrated track record as a litigator is testament to her ability to quickly gain command of highly complex and often unwieldy fact patterns. In nearly three decades as a litigator, Ms. Olson has led hundreds of effective and efficient fact investigations within a litigation context. As lead investigator, Ms. Olson knows how to keep the controlling issues in the crosshairs -- she delivers reliable, consistent results for her clients by leading highly talented and cross-functional teams in navigating vast repositories of information strategically, never losing sight of clearly articulated goals.

Litigating for Victory - at Every Phase

Ms. Olson's creativity and tenacity are the reasons that national companies rely on her to navigate no-win and high-stakes situations. From early and aggressive attacks on the pleadings, such as Twombly/Iqbal challenges in discrimination cases, to a full battery of post-verdict strategies including Rule 12, 50, and 59 motions, Ms. Olson's litigation approach is defined by

sophistication and resourcefulness.

In a recent example, Ms. Olson was part of a unique collaborative trial team that secured the largest commercial verdict in California history. After a six week trial in the Superior Court of Santa Clara County in San Jose, California, the jury returned a verdict of $3.014 billion in damages in favor of HP. In another instance, Ms. Olson and her team won a key discovery ruling in a collective discrimination action brought by the EEOC on behalf of over 90 claimants; the District Court's decision required the Commission to produce all claimants for deposition, which neutralized common EEOC advantages in litigating collective enforcement actions. The Commission's ability to continue adding new claimants as cases progress, while citing reliance on representative testimony and expert discovery, often forces employers to defend against vague and broad claims that are essentially moving targets. Through this motion to compel, Ms. Olson's team struck a blow that should have widespread impact on employers' ability to defend against EEOC-initiated litigation where Rule 23 safeguards are unavailable by upholding employers' right to probe specific accusations of discrimination.

Other examples of Ms. Olson's creative pathways to victory include:

In a sexual harassment pattern and practice case, brought by the EEOC on behalf of 101 employees against the Dial Corporation, Ms. Olson negotiated a settlement on the day of trial following a series of victories on critical motions *in limine*.

In a discrimination case against the CEO and executive team of Motorola, Ms. Olson led a Motion for Directed Verdict that resulted in a favorable settlement at the close of the plaintiff's case.

Representing Aaron's, Inc. in the *Alford* matter, Ms. Olson spearheaded the post-verdict strategy that secured a reversal of the largest-known single-plaintiff sexual harassment verdict in U.S. history.

Policy-Oriented Perspective

Throughout the last decade, Ms. Olson has regularly appeared before the United States Senate, the United States House of Representatives, the EEOC, and the United States Department of Labor on her own behalf (because of her extensive experience in various fields), and on behalf of the United States Chamber of Commerce and the Society for Human Resource Management. In these capacities, she has provided the business perspective on proposed legislation to amend the following laws: the Americans with Disabilities Act, the Equal Pay Act, the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, the application of white collar exemptions to the Fair Labor Standards Act, the Internal Revenue Code, and the Fair Credit Reporting Act. During the Bush Administration, Ms. Olson served as the Employer Spokesperson to the Department of Labor, advising Labor Secretary Elaine Chao on significant wage and hour issues. Advocacy groups have called upon Ms. Olson time and again for *amicus curiae* representation in many landmark cases before the Circuit Courts of Appeals and the U.S. Supreme Court. She has contributed to US Chamber publications, including "The Impact of State Employment Policies on Job Growth: A 50-State Review" (2011) and "A Review of EEOC Enforcement and Litigation Strategy during the Obama Administration - A Misuse of Authority" (2014). In 2014, she testified before the Senate HELP Committee concerning the Paycheck Fairness Act and before the House Subcommittee on Workforce Protections regarding EEOC priorities and enforcement. In 2016, she testified before the EEOC

on behalf of the US Chamber of Commerce concerning proposed revisions to the Employer Information Report (EEO-1). In 2017, she testified before the House Subcommittee on Workforce Protections on behalf of the US Chamber of Commerce concerning the need for more responsible regulatory and enforcement policies at the EEOC. In 2018, she testified before the Senate HELP subcommittee on Primary Health and Retirement Security on the subject of the gig economy and the future of retirement savings. In 2019, she testified before a joint hearing of the House Subcommittee on Civil Rights and Human Services and the Subcommittee on Workforce Protections on the Paycheck Fairness Act (H.R. 7). Ms. Olson continues her advocacy for the employer perspective as the U.S. Chamber of Commerce's Chair of the equal employment opportunity policy subcommittee.

Ms. Olson's deep command of policy issues and sophisticated understanding of the legislative and enforcement processes are invaluable assets for her clients. Her legal analysis encompasses unparalleled insight into legislative intent and history, which translates to nuanced interpretation and creative application of governing law. In 2016, she was nominated to serve on the FLSA Discovery Protocols Committee formed by the U.S. Civil Rules Advisory Committee to draft proposed FLSA Discovery Protocols for FLSA Collective Actions to be used in federal courts.

Media Experience

Ms. Olson is a frequent representative and speaker on a wide range of legal issues facing media employers. She represents companies throughout the country in non-employee and independent contractor issues, with a focus on on-air talent. In 2014, she led the defense of a national broadcast and print media company in a discrimination class action with potential exposure throughout the southern U.S. The plaintiff subsequently dismissed the case. She has served as co-editor of the Guide to Employment Law Compliance, published by Thompson. In November 2014, in recognition of Ms. Olson's commitment to excellence in managing independent contractor relationships, the Dispatch Printing Company of Columbus, Ohio inaugurated the Camille A. Olson Award of Excellence, to be awarded annually to one of their managers. She has also published numerous articles and chapters on various labor issues, and is a regular speaker on complex litigation, discrimination, and non-employee worker matters nationally and internationally. Ms. Olson is frequently quoted and consulted in publications and news outlets such as: *The New York Times, National Public Radio, The Daily Labor Report*, *The Chicago Tribune*, *Crains Chicago Business*, *The Wall Street Journal*, *Presstime*, *Editor & Publisher*, *HR Magazine*, and *HR Wire*.

In high-profile situations with significant reputational risk, national companies rely on Ms. Olson's dexterity in managing media issues. Investor and market perceptions can often evolve into derivative shareholder suits and cause irreparable damage to valuable brands. Ms. Olson's decisive guidance in navigating these challenges and translating these often-nebulous risks into tangible analyses of her clients' decision points makes her an invaluable advisor and crisis manager.

Community Involvement

Ms. Olson also believes strongly in community involvement, and among other community and charitable positions. She is currently on the Advisory Council to the Dean of the University of Michigan Law School and Board of Directors of the Foundation of the University Club of Chicago. In 2017, Ms. Olson Co-Chaired the Coordinated Advice & Referral Program for Legal

Services (“CARPLS”) 2017 Golden Gavel Celebration.

Education

- J.D., University of Michigan Law School
- B.A., University of Michigan
  Recipient of Highest Honors Award, and Eita Krom Scholar for Published Honors Thesis, later republished as, “Effort and Reward: The Assumption that College Grades are Affected by Quantity of Study,” *Social Forces*, June 1985, Volume 63, Number 4, p. 945-967.

Admissions

- Illinois
- California

Courts

- United States Supreme Court
- U.S. Court of Appeals for the First, Fifth, Seventh, Eighth, Ninth and District of Columbia Circuits
- U.S. District Courts for the Central, Eastern and Northern Districts of California
- U.S. District Courts for the Central and Northern Districts of Illinois

Affiliations

- American Bar Association (Labor and Employment Law Section)
- Chicago Bar Association
- The University Club of Chicago (Past President and Chairperson of its Board of Directors; Current Member, Board of Directors’ Long Range Planning Committee)
- The University Club of Chicago Foundation (Member, Board of Directors)
- University of Michigan Law School (Member, Development & Alumni Relations Committee; Chair, Capital Campaign (2013); Chair, Reunion Committee (2013))
- Society for Human Resource Management (Speaker and Frequent Legal Commentator on issues of importance to Human Resource Executives)
- United States Chamber of Commerce (Chair, Equal Employment Opportunity Subcommittee, Member, Labor and Employment Policy Committee; Member of Subcommittee on FLSA Issues)
- Inland Press Association (Ray Carlsen Distinguished Service Award (2013); Board of Directors (2001-present); Chairperson of Human Resource Committee and Faculty Member of Circulation Academy (2001-present))
- Coordinated Advice & Referral Program for Legal Services (CARPLS) (Co-Chair of 2017 Golden Gavel Celebration)

Congressional and EEOC Testimony

- Testified before a joint hearing of the House Subcommittee on Civil Rights and Human Services and the Subcommittee on Workforce Protections concerning The Paycheck Fairness Act (2019)
- Testified before the Senate Subcommittee on Primary Health and Retirement Security concerning the 'gig economy' and the future of retirement savings (2018)
- Testified before the House Subcommittee on Workforce Protections concerning the need for more responsible regulatory and enforcement policies at the EEOC (2017)
- Testified before the EEOC on behalf of the US Chamber of Commerce concerning proposed revisions to the EEO-1 (2016)
- Testified before the Senate Committee on Health, Education, Labor & Pensions on "The Paycheck Fairness Act" (2014)
- Testified before the House Subcommittee on Workforce Protections regarding EEOC priorities and Enforcement (2014)
- Testified before the Senate Committee on Health, Education, Labor & Pensions on "Employment Non-Discrimination Act of 2011" (2012)
- Testified before the House Committee on Education and Labor on "Employment Non-Discrimination Act of 2009" (2009)
- Testified before the Senate Committee on Health, Education, Labor & Pensions on "Employment Non-Discrimination Act of 2009" (2009)
- Testified before the House Committee on Education and Labor at the Subcommittee on Workforce Protections on the "Paycheck Fairness Act" (2007)
- Testified before the Senate Committee on Health, Education, Labor & Pensions on "The Americans With Disabilities Act Restoration Act of 2007" (2007)
- Testified before the House Committee on Education and the Workforce at the Subcommittee on Employer-Employee Relations on the "Workplace Religious Freedom Act of 2005" (2005)
- Testified before the Equal Employment Opportunity Commission on behalf of SHRM regarding "Repositioning for New Realities: Securing EEOC's Continued Effectiveness" (2003)

Recent Publications

- Co-Author, "EEOC Proposes EEO-1 Pay Collection Timeline to Court: If Approved, Employers to Submit Pay Data by September 30, 2019," *Management Alert*, Seyfarth Shaw LLP (April 5, 2019)
- "Five Most Troubling Aspects of the 'Paycheck Fairness Act' According to Attorney that Testified to Congress;'" The Justin Brady Show (Interview dated February 23, 2019)
- "Boards Rely on Intense Vetting for New Leaders after #MeToo," *Bloomberg BNA* (Quoted in Article dated January 11, 2019)
- "Gig Economy Growth Slower Than First Thought, Profs Say," *Bloomberg Law* (Quoted in Article dated January 8, 2019)
- "HR Tips for Managing Teen Workers," SHRM (Quoted in Article dated April 16, 2018)
- Co-Author, "New Governor, New Result: New Jersey Legislature Passes Pay Equity Bill," *Management Alert*, Seyfarth Shaw LLP (April 2, 2018)

- “Ruling on Salary History Fuels Renewed Focus on Gender Pay Inequities,” National Law Journal (Quoted in Article dated April 12, 2018)
- “Unequal Rights: Contract Workers Have Few Workplace Protections” National Public Radio (Interview dated March 26, 2018)
- “The Gig Economy is Lacking in this One Important Respect,” *CNBC.com* (Quoted in Article dated February 18, 2018)
- “Will DOL’s New Intern Test Revive Unpaid Internships?” *SHRM* (Quoted in Article dated January 9, 2018)
- “Some Deductions for Salaried Staff Are Permitted,” *SHRM* (Quoted in Article dated December 26, 2017)
- “Looking to Sue a Law Firm for Discrimination? Good Luck,” *Crain’s Chicago Business* (Quoted in Article dated November 10, 2017)
- “Implicit Bias Theory in Employment Litigation,” *The Practical Lawyer* (October 2017)
- “FLSA Developments: DOL and the Courts,” *ALI-CLE* (July 2017)
- “Implicit Bias Theory in Employment Litigation,” *ALI-CLE* (July 2017)
- “The Contingent and On-Demand Workforce and the ‘Gig Economy,’” (June 2017)
- “New rule, more unnecessary work: Second Look,” *USAToday.com* (April 16, 2017)

Recent Presentations

- “Government Updates,” Cambridge Forum on Employment Law (February 28, 2019)
- “Investigations in the #MeToo Era: Best Practices for Conducting Workplace Investigations,” BLG Annual Client Conference (October 19, 2018)
- “#MeToo in the Law Firm: Sexual Harassment, Gender Discrimination, and Other Employment Exposures in 2018,” ABA Fall 2018 National Legal Malpractice Conference (September 27, 2018)
- “Generations in the Workplace: Differences, Similarities, and Best Practices,” Inland Press Association Annual Meeting (September 10, 2018)
- “Social Media & Employment Law,” Panelist for American Law Institute Continuing Legal Education Employment Law Conference (July 26, 2018)
- “Damages in Employment Law Cases,” Panelist for American Law Institute Continuing Legal Education Employment Law Conference (July 26, 2018)
- “Independent Workers: Recent Classification Developments for Supply Chain Communities,” Retail Industry Leaders Association Webinar (June 29, 2018)
- “Labor & Employment Compliance Highlights,” Retail Industry Leaders Association Compliance Council Meeting (May 24, 2018)
- “The Future of Law and Work: Gig Economy and Independent Workers,” Retail Industry Leaders Association L&E Committee Spring Meeting (May 15, 2018)
- “The Sharing Economy in 2018 -- Biggest Risks and Opportunities & What’s New,” CLE Presentation to ADP (May 8, 2018)
- “Core Principles in Establishing a Harassment-Free Workplace,” 67th Annual Meeting of the Seventh Circuit Bar Association (April 30, 2018)
- “Equal Pay Day Webinar: Trends and Developments in Pay Equity Litigation in 2018,”

Seyfarth Shaw Webinar (April 10, 2018)

- "Developments in the New Economy: New Legislation for the 'Gig' Economy," American Arbitration Association (March 8, 2018)
- "Government Agency / Government Appointees Update," Cambridge Employment & Labor Law Forum (March 1, 2018)
- "Washington 2018 Labor & Employment Outlook," Seyfarth Shaw Webinar (February 27, 2018)
- "Crisis Management: Best Practices for Preventing and Addressing Sexual Harassment in the Workplace," Seyfarth Shaw Webinar (January 4, 2018)
- "Bridging Generations: Age Differences, Age Bias and Implicit Bias," Association of Corporate Counsel Annual Meeting (October 17, 2017)
- "Hot Button Issues: Employment Law Issues and the Sharing Economy," Marketplace Risk Conference (September 13, 2017)
- "FLSA Developments: DOL and the Courts" and "Dealing with Implicit Bias in the Workplace," ALI-CLE Current Developments in Employment Law (July 27, 2017)
- "Litigating the Gender Pay Gap," ALAS Annual Meeting (June 23, 2017)
- "Employment Law Issues and the Sharing Economy," Work: The Future Presentation (June 21, 2017)
- "The Trump Administration and Hot HR Issues that may be Keeping You Up at Night," Inland Press Association Human Resources Management Conference (May 16, 2017)
- "The De-Regulation of America - Where are the Targets in Labor?" DHL Public Policy Forum (May 11, 2017)
- "Equal Employment Opportunity Commission (EEOC) Update," Retail Industry Leaders Association, Labor and Employment Committee Meeting (May 2, 2017)

Representative Engagements

- *Hewlett-Packard v. Oracle Corporation*, 11CV203163 (Cal. Super. Ct., Santa Clara County) (commercial litigation resulting in unanimous jury verdict for HP of $3.014 billion in damages)
- *Villalpando, et al. v. Exel Direct Inc.*, et al. (consolidated class action that settled on the eve of trial (2016))
- *Epstein v. Des Moines Register* (No. 15 CV 453 (S.D. Ia. January 2017)) (Conditional certification denied a class of news reporters; After conditional certification was denied, the single plaintiff case was resolved)
- *Cox v. Gannett Company et al* (No. 15 CV 2075 (S.D. In. September 2017)) (Employee misclassification matter in which Gannett prevailed on its motion for summary judgment; court concluded that newspaper's relationship with its distributors is on of independent contractor status, not employment)
- *Tank v. T-Mobile USA*, Appeal No. 13-1912 (7th Cir. July 2014). (allegations of race and national origin discrimination, hostile work environment, and retaliation; summary judgment granted by the Northern District of Illinois affirmed)
- *Minion v. Exel, Inc. et al* 12-12128 (E.D. Michigan) (allegations of race, gender discrimination, sexual harassment, hostile work environment under Title VII and state law;

summary judgment granted on all counts)

- *EEOC v. DHL Express, Inc.,* 10 CV 6139 (N.D. Ill.) (EEOC alleged pattern and practice of race discrimination and harassment on behalf of more than 90 African-American courier claimants)
- *Caldwell v. Continental Casualty Company, et al.,* No. 12 CV 00364 (C.D. Cal.) (alleged class of claims adjusters alleged failure to pay overtime, meal periods, rest breaks and wage statements premised on improper timekeeping practices; resolved through favorable settlement on individual basis)
- *Welch v. KND Development 55 LLC (Kindred Healthcare),* 12-CV-01073 (C.D. Cal.) (California class action brought by alleged class of clinical liaisons alleging misclassification as exempt employees under outside-sales and administrative exemptions; resolved through favorable settlement on non-class basis)
- *Bello v. Procter & Gamble Distributing LLC*, No. 30 2012 00551702 CU (Cal. Super. Ct., Orange County filed Mar. 6, 2012) (California class action brought by class of merchandisers alleging unpaid wages, failure to provide meal and rest periods, failure to pay overtime, unreimbursed business expenses and unfair business practices; favorable settlement reached on non-class basis)
- *McGirr v. Continental Casualty Company, et al.,* Nos. 12 CV 03482 (N.D. Ill) and 11 L 4206 (Circuit Court of Cook County) (summary judgment granted on all counts in wrongful termination suit including claims of defamation, negligent infliction of emotional distress, and tortious interference brought by high-ranking executive)
- *Cook and Sowell v. Aaron's Inc.,* No. 12-CV-03867 (N.D. Ga.).*(sexual harassment, hostile work environment, sex discrimination under Title VII and state tort claims; resolved during discovery process*
- *Boothe v. Aaron's, Inc. and Clayton Lingelbach*, No. 8732 (Chancery Court McNairy County, Tennessee). (single-plaintiff sexual harassment, hostile work environment, sex discrimination, race discrimination and retaliation case; took over case just weeks before trial, utilized an aggressive and sophisticated eDiscovery strategy; favorable settlement achieved after mediation)
- *Alford v. Aaron Rents, Inc.*, No. 08 CV 00683 (S.D. Ill.). (defendant retained Seyfarth to handle the appeal of a single-plaintiff sexual harassment case that resulted in the largest-known single-plaintiff verdict in United States history; the Court vacated the initial verdict, plaintiff agreed to a non-confidential settlement on terms proposed by Seyfarth that reduced the verdict by 94 percent)
- *Hewlett-Packard Co. v. Hurd*, et al. In 2010, Ms. Olson was retained by Hewlett-Packard to oversee affirmative litigation involving allegations against the company CEO. She also represented HP in litigation challenging the CEO's acceptance of a position as co-president of a competitor, Oracle. A favorable settlement was achieved immediately after initiating the affirmative litigation against the former CEO in Palo Alto, California.
- *Ruffin and Baker, et al. v. Exel Direct, Inc.,* No. 09 CV 1735 (N.D. Ill. September 2011). (summary judgment granted in alleged multi-count class action challenging defendant's business model of independent contractor distributors who fulfill customer delivery orders)
- *Ellis and Price, et al. v. DHL Express, Inc. (USA) and Deutsche Post World Net,* No. 08 CV 06541 (N.D. Ill.) and Appeal No. 09-3596 (7th Cir. January 2011). (summary judgment granted in a Worker Adjustment and Retraining Notification (WARN) purported class action filed by drivers, won lower and appellate court victories on behalf of DHL as it completed its

withdrawal from the U.S. market and significantly reduced its workforce)

- *Wal-Mart Stores, Inc. v. Dukes et al.*, (131 S. Ct. 2541 (2011)) (provided representation of the Society for Human Resource Management and HR Policy Association as *amici curiae* in U.S. Supreme Court on class certification)
- *Helen M. Carter v. Hewlett-Packard Company,* No. (D.C. Id. May 2010) (alleged worldwide class of women and older executives and directors allege age and sex discrimination in all aspects of employment)
- *Metty v. The Motorola Company,* No. 05-CV- 9989 (D.C. Ill March, 2007) (multiple claims brought in two week jury trial against the Executive Team and CEO of Motorola resolved immediately following Defendant's Motion for Directed Verdict in Chicago, Illinois)
- *Stephen G. Lingis et al. v. Motorola Inc.*, No. 03-5044 (N.D. Ill. June 2009) (summary judgment granted in ERISA class action on basis that the company was shielded from liability by plan participants under the safe harbor provision of ERISA)
- *EEOC v. The Dial Corp.*, No. 02-CV-10109 (D.C. Iowa August, 2004) (EEOC pattern and practice multi-plaintiff disparate treatment and impact case brought challenging the use of a pre-employment testing device; favorable result following 2 week jury trial in Des Moines, Iowa)
- *EEOC v. The Dial Corp.*, No. 99 C 3356 (N.D. Ill.) (EEOC alleged a pattern and practice of sexual harassment and sought relief on behalf of 101 employees to be tried before a jury in Chicago Illinois; case resolved on the day of trial.)
- *Fleishman v. Continental Casualty Company (No. 11-3754 7th Cir. 2012) (plaintiff alleged age and disability discrimination under ADEA and ADA; Seventh Circuit affirmed lower court's grant of summary judgment to defendant)*
- *Abbe, et al. v. Daewoo Motor America, Inc., Daewoo Motor Corp. Ltd., Daewoo Corporation* (No. 99-09776 GAFCSHX M. D. Fl. 2000) (plaintiffs on behalf of themselves and approximately 6,000 commissioned sales representatives alleged in Florida that the company inappropriately classified them as independent contractors, engaged in retaliatory discharge practices, and violated the FLSA by failing to pay them minimum wages and overtime; district court denied plaintiffs' motion to proceed as a class on the basis of defendants' position that the plaintiffs' status as independent contractor/employee is not conducive to class litigation.) NOTE: Plaintiffs also filed numerous other separate class actions in California raising other legal issues, as well as IRS Form SS-8 Requests for Worker Classification Determinations that were handled by Seyfarth attorneys.
- *Adkins v. Mid America Growers*, 167 F.3d 355 (7th Cir. 1999) (representative action by 200 farm workers for overtime and minimum wages; case dismissed following remand.)
- *Gibbs, et. al v. Daily Southtown Inc. and Pulitzer Community Newspapers, Inc.* (No. 96 CH 1884 Circuit Court of Cook County, Chancery Division, 1st District 1997) (plaintiffs, on behalf of themselves, and an alleged class of distributors, alleged they were treated as employees not independent contractors, and that as a result, the company unlawfully deducted monies from their wages in violation of the Illinois Wage Payment and Collection Act, violated their individual employment agreements, improperly issued them IRS Form 1099s, and were deprived of other employee benefits. On eve of pending motion in opposition to class certification, named plaintiffs settled for nominal amount.)
- *Budd, et al. v. Freedom Communications, Inc.* (No. 96-D-238 D. Col.) (plaintiffs, on behalf of themselves and 700 other non-employee workers brought seven claims against defendant in Colorado, including antitrust law violations under the Sherman Antitrust Act,

tortious interference with contract claims, breach of contracts, violation of state minimum wage and wage collection act laws, Labor Peace Act, fraudulent and negligent misrepresentations of workers' alleged non-employee status to deprive them of various employee benefits, and breach of fiduciary duty. Class certification denied on the basis that the determination of the employment/independent contractor status of the plaintiffs was central to the complaint, and plaintiffs did not establish that their proposed class met the commonality, typicality, and adequacy of representation requirements of Rule 23(a).)

- *Cherry v. AT&T*, 47 F.3d 225 (7th Cir. 1995) (affirming grant of summary judgment in employer's favor on glass ceiling promotion claim brought by high-ranking executive.)
- *Coon Rapids Lincoln Mercury v. The Star Tribune Company*, District Court of Hennepin County, Minnesota (national class action alleging consumer fraud and breach of contract claims) (case resolved while defendants' motion for summary judgment was pending.)
- *Gustovich, et al. v. AT&T Communications, Inc.*, 972 F.2d 845 (7th Cir. 1992) (summary judgment decision affirmed by Seventh Circuit applying ADEA standards in workforce reduction context to employees evaluated and rank ordered according to skills and needs of business.)
- *Bullock v. AT&T Communications, Inc.*, 50 Fair Emp. Prac. Cas. (BNA) 407 (N.D. Ill. 1989) (summary judgment decision under ADEA and state law involving claims of high level EEO executive that company's work force reduction programs discriminated against him personally and against others.)
- *Smith v. White Farm Equipment Company, A Division of Allied Products* (N.D. Ohio 1989) (jury verdict for employer on ADEA claims of manager in reduction in force case.)
- *Smith v. Contra Costa Newspapers, Inc. (Knight Ridder)*, (Contra Costa County Superior Court) (certified class action of over 8,000 non-employee workers alleging antitrust violations, breach of contract, unfair business practices, and lost earnings. On eve of pending motion in opposition to class certification, the case was resolved.)