



Today's Worker: Employees, Contractors, and Beyond

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Refresher: Employee or Contractor

- *Who* is the person in business for?
- Contract of service vs. Contract for services
- Decisions are based on the actual relationship:
 - Control
 - Equipment
 - Business integration
 - Opportunity to profit / risk of loss

Why it Matters

- Allegations of “misclassifying” workers
- Important legal implications, including:
 - Employment standards (minimum wage, vacation, overtime)
 - Statutory deductions and withholdings (tax, CPP, EI)
 - Validity of mandatory arbitration clauses (new)
 - Entitlements upon terminating the agreement

Why it Matters

- Entitlements upon terminating the contract:
 - **Old:** Only employees have implied term of reasonable notice
 - **New:** “Dependent Contractors” do as well

Why it Matters

- The “gig economy” and rise in new ways of working
- Political issue → Changes in the law



Uber

Key Battlegrounds

- Employment standards & class actions
- Ability to unionize



Uber Drivers: Employees or contractors?

United States

- Federal regulators say Independent Contractors
- New California Bill (September 2019)
 - Company must prove that the worker is:
 1. Free from the company's control
 2. Doing work that isn't central to the company's business
 3. Has an independent business in that industry
- Uber has settled a class action

Uber Drivers: Employees or Contractors?

Canada

- Employment Standards Class Action
 - *Heller v. Uber Technologies Inc.*, 2019 ONCA 1
- UCFW Canada signing up Toronto Uber drivers

Practical Tips

1. Properly drafted agreements matter
2. Think about a potential claim of misclassification – particularly for termination and arbitration clauses
3. Ensure the actual working relationship is consistent with the agreement



These materials are intended to provide brief informational summaries only of legal developments and topics of general interest.

These materials should not be relied upon as a substitute for consultation with a lawyer with respect to the reader's specific circumstances. Each legal or regulatory situation is different and requires review of the relevant facts and applicable law.

If you have specific questions related to these materials or their application to you, you are encouraged to consult a member of our Firm to discuss your needs for specific legal advice relating to the particular circumstances of your situation.

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