

## The Debate between Employees and Independent Contractors

The popularity of chauffeured limousine/car services to get from point A to point B is growing rapidly. With that trend comes the issue of whether the drivers for these services, such as Uber and Lyft, are employees or independent contractors for the purpose of receiving workers' compensation benefits.

In order for an injured worker to receive compensation benefits, he or she must be an employee. But who is an employee can be complicated when the injured workers are drivers of a chauffeur service using their own vehicle or a vehicle leased through a special leasing set up, such as Uber's newly introduced Xchange Leasing Program.

The Appellate Division in *Babekr v. XYZ Two Way Radio* decided a case where the individual was a driver for a limousine service and sustained an injury. Here, the court weighed 12 factors. The Court appeared to place greater weight on the employer's right to control the means and manner of the worker's performance, who furnishes the equipment and workplace and the factor whether the work is an integral part of the business of the employer. It was the latter that was considered in conjunction with whether the petitioner was economically dependent on the work relationship. Here, the Court found the driver was an independent contractor. The limousine service provided the vehicle computer which the petitioner logged onto to obtain passengers, required petitioner dress a certain way and required him to have a certain type of car in which to transport passengers. However, this was outweighed by the petitioner's ability to determine if or when he worked, the petitioner using his own vehicle for which he did not receive reimbursement of expenses and the service not being dependent upon the petitioner to transport passengers as they had over 400 individuals like the petitioner "waiting in line" for passengers to transport.

Uber allows individuals to get a taxi, private car or rideshare through the use of a mobile phone app. The company emphasizes the independence and flexibility drivers have in working as often as they want and whenever they want. A court looking to *Babekr* could weigh the 12 factors and find Uber drivers are independent contractors and thus not entitled to workers' compensation benefits. Uber's website, filled with disclaimers that drivers are independent contractors, may very well be accurate.