Duff on Hospitality Law

The Sharing Economy - Is the California Uber Ruling Indicative of a Shared Headache for Short Term Rentals?

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The sharing economy requires a new look at work relationships. Many of the business models in the sharing economy are based on individuals being creative and entrepreneurial as they seek to provide services to others. Drivers for companies such as Uber and Lyft share their cars using a license to access software that connects drivers and riders. Residences are rented out on a short term basis using software that markets to prospective travelers on sites like Vrbo and Airbnb. SnapGoods provides a mechanism for lending or borrowing high-end household items. DogVacay provides host homes to animals whose owners are travelling. TaskRabbit allows others to bid to do your tasks and odd jobs. There is a never-ending list of creative sites looking to maximize the sharing economy. But, when is the line crossed from independent contractors providing services to others to employees of the "hosting" company? This is the question that has been the focus of recent administrative rulings and lawsuits involving Uber.

In Florida, a driver for Uber filed for unemployment after his car was damaged in an accident. As reported in the Miami Herald, the state agency agreed he was an employee for the purposes of unemployment benefits. Meanwhile, in California the Labor Commission also found that an Uber driver was an employee not an independent contractor. Both Uber and Lyft are currently facing lawsuits that are wending their way through the Northern California Courts alleging the same thing. So, what does this mean to other sharing economy ventures outside of the transportation industry, such as the short term rental market?

A quick look at the reasoning of the California Labor Commission is the best place to start in the quest for an answer. Under California law, there is an inference of "employment" if personal services are performed as opposed to business services. The factors considered when determining independent contractor status are:

- Whether the person performing services is engaged in an occupation or business distinct from the alleged employer;
- Whether or not the work performed is a part of the regular business of the alleged employer;
- Whether the alleged employer or the worker supplies the tools and the place where the person performs the work;
- The amount invested by the worker in the equipment or materials required by the task and whether or not the worker has employees of their own;

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- Whether the service rendered requires a special skill;
- The kind of occupation and whether the work is usually done under the direction of the alleged employer or by a specialist without supervision;
- The alleged employee's opportunity for profit or loss depending on his or her managerial skills;
- The length of time for which the services are to be performed;
- The degree of permanence of the working relationship;
- The method of payment, whether by time or by job; and
- Whether or not the parties believe an employer-employee relationship is being created.

In the recent California case, the driver claimed she was owed unpaid wages, reimbursement of business expenses, liquidated damages and penalties. Uber disagreed saying she was an independent contractor who had complete control over her schedule, if she even took any riders, and she had to obtain her own license from the state to carry passengers. Uber simply provided the iPhone and the platform for matching riders and drivers. The Labor Commissioner sided with the driver, finding that the type of work performed by the driver was integral to Uber's business. Specifically, without drivers such as the Plaintiff, Uber's business would not exist. Uber was involved in every aspect of the operation. They vet the drivers, control the tools the drivers use, set the price for the trip, accept the cancellation fee without necessarily sharing it with the driver, and discourage the acceptance of tips by drivers because doing so would be counterproductive to the Company's advertising and marketing strategy. The Labor Commission said all of these activities pointed to an excessive amount of control, thus demonstrating an employment relationship - not that of an independent contractor.

So what does this potentially mean to the rest of the sharing economy, in particular, the short term rental market? Likely, not much, but that could vary based on how the service operates. For example, Vrbo provides a web platform and marketing, but the property owner needs to do the majority of the work to get her property on the site, manage the property and deal with reservations. One of the big distinctions is that the short term rental companies provide a marketing platform for a business service (renting a piece of property) as opposed to a personal service (renting a driver). The risk for such companies is not so much with the property owners, but with the service personnel who provide housekeeping, or maintenance services or other similar services to support the properties. The short term rental company may insulate itself from a claim that the service personnel are its employees if it limits its involvement in the hiring and supervision of such services, leaving that to each individual property owner. If, however, the short term rental company acts more as a property manager, such as Vacasa, then there may be an argument that the service personnel are employees of the short term rental company. No matter the industry, if there is any question regarding the employment/independent contractor status of your workers, it is always best to involve legal counsel sooner rather than later.

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