

**FEBRUARY 22, 2022**

For more information,
contact:

Luke Edwards
+61 419 233 041
laedwards@kslaw.com

Darren Gardner
+1 415 318 1246
dgardner@kslaw.com

Albert Giang
+1 415 318 1251
agiang@kslaw.com

Jules Quinn
+44 20 7551 2135
jquinn@kslaw.com

Mitch Robertson
+61 431 154 893
mrobertston@kslaw.com

King & Spalding

San Francisco
50 California Street
Suite 3300
San Francisco, CA 94111
Tel: +1 415 318 1200

"Gig" Economy - Emerging Themes and Global Perspectives

Series 2, 10 in 10: Issue 6

On-demand workers ("gig workers") represent a growing portion of the global workforce. While the continued growth of this category presents opportunities for employers to recalibrate their workforce strategy, it also creates unique practical and legal challenges as the courts, regulators and interest groups continue to grapple with this relatively new category.

There are three emerging themes across the Asia-Pacific, Europe, the Middle East and the United States that global employers should keep in mind when considering the risks and opportunities associated with gig worker platforms:

1. Developing and Diverging Law on Who is an Employee/Contractor

Following the recent decision in the United Kingdom (which found that Uber drivers should be classified as workers under the country's employment laws), similar type claims have emerged in the Asia-Pacific and Europe. However, the resulting approach taken by courts/tribunals in dealing with these claims (even concerning the same platform and type of worker) has been markedly different. For instance, in Australia, a delivery rider for a delivery services company was successful in claiming they were an employee rather than an independent contractor, while in Belgium, delivery riders for the same delivery services company were found not to be employees but independent contractors. Further, in Australia, there has been judicial refinement as to what factors are relevant to an assessment of whether an individual should be considered an employee or an independent contractor.

The above represents a key challenge – in that models and arrangements which are standardized across borders can be subject to markedly different outcomes depending on the relevant jurisdiction. Even for gig economy companies that first formed in the United States – which itself



has a patchwork of varying laws affecting independent contractors – the prospect of growing and entering international markets requires monitoring of and advising on these international trends.

Categorization is crucial not only to the benefits and rights of these workers but also to the appropriate tax regime to be applied. The UK has recently introduced an “IR35” compulsory assessment for a company engaging workers via an intermediary such as a personal services company. If the worker would otherwise be an employee of the end-user client but for the intermediary, the end user is responsible for the operation of all tax and social security contributions,

2. Emerging Regulatory Complexity

Another emerging theme across the Asia-Pacific, the Middle East and Europe has been increasing regulation of on-demand labor models. For instance, in China, the authorities are proposing to implement new measures to protect such workers – including the establishment of a “hybrid” definition covering these workers. In a similar vein, in the United Arab Emirates, a new labor law has been published which expressly recognizes and captures “flexible working.”

Meanwhile, across Europe, the European Commission has published a proposed Directive aimed at improving the working conditions for “platform workers.” While in Spain, the government has amended its labor laws to provide certain labor rights for workers engaged through digitalized working environments. The United States has no shortage of regulatory scrutiny over the gig economy, but one interesting development has been growing interest by gig platforms and workers to *affirmatively* propose their own legislation and regulatory models, including in California (where a ballot initiative was struck down and is on appeal) and Massachusetts.

There is a growing trend towards increasing regulation and scrutiny over on-demand labor arrangements and a tightening of what was previously (in some jurisdictions) under-regulated, or unregulated, ground.

3. Social Developments

Finally, there have also been broader social labor and political developments across the Asia-Pacific and Europe. For instance, the Singaporean and Australian governments have engaged committees/working groups to specifically consider whether additional protection or regulation of gig workers is warranted. In Australia, this committee has recommended (in an interim report) an expansion of the current regulatory arrangements in place to ensure coverage of such workers.

Further, union activity and collective action is also gaining traction. For example, in the United Kingdom, the Trades Union Congress has called for trade unions to have a digital right of access to platform and gig economy workers, and in Australia, unions have been targeting such platforms with active campaigns calling for increased regulation.

These changes represent a broader social awakening and, as a result, such arrangements will continue to be a particular focus politically and with labor interest groups, such as trade unions.



Conclusion

Global employers engaging on-demand labor must continue to carefully assess and understand the emerging legal, regulatory, and social and political landscape in the jurisdictions and regions in which they operate. In particular, care should be taken to ensure that workforce strategy and arrangements for engaging contingent workers are up to date and have adequate controls in place to appropriately harness the opportunity and mitigate the risks associated with such arrangements.

ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,200 lawyers in 23 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising." View our [Privacy Notice](#).

ABU DHABI	CHARLOTTE	FRANKFURT	LOS ANGELES	PARIS	SINGAPORE
ATLANTA	CHICAGO	GENEVA	MIAMI	RIYADH	TOKYO
AUSTIN	DENVER	HOUSTON	NEW YORK	SAN FRANCISCO	WASHINGTON, D.C.
BRUSSELS	DUBAI	LONDON	NORTHERN VIRGINIA	SILICON VALLEY	