

Will the Trend of Gig Employment Continue? Andrew Berns Explains the Legal Issues in #Evolve Magazine/WorldatWork Article “Expanding the Talent Tent”

In “Expanding the Talent Tent,” #Evolve magazine and WorldatWork reporter Mark McGraw notes that employers are expanding their candidate pools, as more types of jobs can be performed by gig workers who can work anywhere, anytime.

He turned to [Andrew S. Berns](#), partner and Chair of Einhorn Barbarito’s Commercial Litigation and Employment practice, for insight on the trend of gig employment, and whether independent contractors will become an even bigger piece of the workplace puzzle.

Andy explained that what appears to be a simple issue is quite complicated and the decisions as to how to classify workers and the companies that provide them with opportunities to work differ in each state.

New Jersey’s ABC test to evaluate working relationships starts with the proposition that the freelancer relationship will be considered one of employee and employer unless all three requirements of the ABC test are satisfied. Andy noted, “Effectively, to be considered an independent contractor, a worker must show they are free from control by those providing working opportunities. They must also demonstrate that the service they are providing is either outside the usual course of business for which the service is performed or the service is performed outside of all the places of business of the enterprise for which such service is performed. Finally, the individual being evaluated must be engaged in an independently established trade, occupation, profession or business.”

He said that most workers classified as independent contractors like this designation, as “they enjoy the independence, want to make their own decisions about where and when they work and have no concerns about not being eligible for unemployment compensation or disability benefits.”

“Alternatively,” he added, “workers who feel they are actually employees disagree strongly with policies which classify them as independent contractors and allow employers to deduct expenses from their pay, which they believe are proper expenses to be absorbed by what they consider to be their employer.”

Read the full article at [#Evolve and WorldatWork](#).