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LEGISLATIVE ACTION ALERT



Office of Congressional and Public Affairs

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NLRB Returns to Long-Standing Independent-Contractor Standard

Washington, DC—Today, the National Labor Relations Board returned to its long-standing independent-contractor standard, reaffirming the Board's adherence to the traditional common-law test. In doing so, the Board clarified the role entrepreneurial opportunity plays in its determination of independent-contractor status, as the D.C. Circuit has recognized.

The case, [SuperShuttle DFW, Inc.](#), involved shuttle-van-driver franchisees of SuperShuttle at Dallas-Fort Worth Airport. Applying its clarified standard, the Board concluded that the franchisees are not statutory employees under the National Labor Relations Act (the Act), but rather independent contractors excluded from the Act's coverage.

The Board found that the franchisees' leasing or ownership of their work vans, their method of compensation, and their nearly unfettered control over their daily work

schedules and working conditions provided the franchisees with significant entrepreneurial opportunity for economic gain. These factors, along with the absence of supervision and the parties' understanding that the franchisees are independent contractors, resulted in the Board's finding that the franchisees are not employees under the Act. The decision affirms the Acting Regional Director's finding that the franchisees are independent contractors. Today's decision overrules [FedEx Home Delivery](#), a 2014 NLRB decision that modified the applicable test for determining independent-contractor status by severely limiting the significance of a worker's entrepreneurial opportunity for economic gain.

Chairman John F. Ring was joined by Members Marvin E. Kaplan and William J. Emanuel in the majority opinion. Member Lauren McFerran dissented.