

Gig economy: essential aspects of contracting

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› [Concept of contracting and applicable rules](#)

› [Tests of employment](#)

› [Comment](#)

With rapid advances in technology and increasingly blurred borders, business organisations and individuals have adopted novel initiatives to better cater to and meet their demands. The challenges brought about by the covid-19 pandemic have further propelled people to adapt to new developments to thrive during these times.

Concept of contracting and applicable rules

Although already present locally for some time, the gig economy setup has become more prevalent in view of current circumstances. "Gig economy" is an umbrella term referring to those engagements that are not, strictly speaking, employment relationships. One of the more well-known examples of gig setups would be that of contracting.

In the Philippines, contracting refers to an arrangement where a person who carries on a distinct and independent business undertakes to perform a job, work or service themselves under their own responsibility, according to their own manner and method, free from the control and direction of the principal in all matters connected to the performance of the work except as to the results.⁽¹⁾

In *Fuji Television, Inc. v Espiritu*,⁽²⁾ the Supreme Court outlined the two major forms of contracting arrangements:

- a trilateral relationship involving the principal, the agency and the employees; and
- a bilateral independent contractorship.

Trilateral relationships

These arrangements refer to one whereby a principal agrees to farm out to a contractor the performance or completion of a specific job or work within a definite or predetermined period, regardless of whether such job or work is to be performed or completed within or outside the premises of the principal.⁽³⁾ These usually involve three parties: a) the principal who engages the services of b) a contractor who, in turn, performs the farmed work through c) its employees.

Ultimately, this engagement still involves employees. Thus, the provisions of the Labor Code, particularly articles 106 to 109 and other relevant administrative notices (the most prominent being the Department of Labor and Employment's Department Order No. 174, series of 2017) govern these arrangements.

Individual contractors and bilateral relationships

Conversely, individual contractors are recognised in law as individuals with unique skills and talents that set them apart from ordinary employees. This is different from the previously discussed trilateral relationship as the independent contractor directly performs the work for the principal.⁽⁴⁾ At present, individuals with specialised skills have been able to successfully market themselves as individual contractors performing specialised work, often with multiple organisations.

Those parties engaged in a bilateral contracting setup, by reason of such a classification, are beyond the scope of the Labor Code. Their obligations are therefore governed by the relevant provisions of the Civil Code.

Tests of employment

One important nuance in distinguishing whether a relationship is one of contracting or subcontracting or one of employment is the element of control. Time and again, the Supreme Court of the Philippines has emphasised that the existence of the element of control over the means and methods of work is the single most integral element that establishes the existence of an employment relationship, even if it is not exercised.⁽⁵⁾

The mere presence of this power of control necessarily transforms the relationship into one of employment, which entails all the corresponding obligations and responsibilities connected to it. These would include, among others, compliance with the prescribed minimum terms and conditions of employment, as well as the remittance of mandatory payments to government agencies.

For those individual contractors, it is likewise necessary to establish that they were engaged due to their unique skills and talents. Otherwise, these relationships run the risk of being classified as one of employment.

A few examples of skills, talent and experience that have been previously considered as unique by the Supreme Court would include those of a feminist advocate and columnist,⁽⁶⁾ of a *masiador* and a *sentenciador* in cockfighting arenas,⁽⁷⁾ and of a basketball referee.⁽⁸⁾

Comment

While the gig economy is on the rise and may have even extended a lifeline to organisations and individuals, compliance with the applicable laws and regulations is still paramount in maintaining business stability and continuity, especially during the pandemic.

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Endnotes

(1) *Orozco v Court of Appeals*, 457 SCRA 700, 13 August 2008.



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(2) 744 SCRA 31, 3 December 2014.

(3) 744 SCRA 31, 3 December 2014.

(4) 744 SCRA 31, 3 December 2014.

(5) *Atok Big Wedge Company, Inc. v Jesus P Gison*, 655 SCRA 193, 8 August 2011.

(6) *Orozco v Court of Appeals*, 457 SCRA 700, 13 August 2008, as above.

(7) *Semblante v Court of Appeals*, 655 SCRA 444, 15 August 2011.

(8) *Bernarte v Philippine Basketball Association*, 657 SCRA 745, 14 September 2011.