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Indiana Supreme Court Rules Driver Not Employee of Business Connecting Drivers with Customers

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A driver who delivers recreational vehicles or trucks under a company's authority is an independent contractor, not an employee, for purposes of the Indiana Unemployment Compensation Act, the Indiana Supreme Court has ruled. Q.D.-A, Inc. v. Indiana Dep't of Workforce Dev., No. 19S-EX-43 (Jan. 23, 2019).

Resolving conflicting lower court rulings, the Court clarifies how the state's three-prong "ABC Test" to determine employment misclassification should be applied.

Background

Q.D.-A, Inc. "is a business that connects drivers with customers who need too-large-to-tow vehicles driven to them." The company acts as a matchmaker, matching the needs of its customers with the services of its independent contractor drivers.

As is its usual practice, the company entered into an independent contractor agreement with the driver so the driver could be matched with customers in need of driving services. Under the agreement, which explained the driver was an independent contractor, the driver retained control over the manner and means of performing any driving job. The agreement required little from the driver aside from abiding by government regulations and completing services in a professional manner. Among other things, the agreement allowed the driver to hire employees, work for other driving services, provide his own equipment and tools, and negotiate his own service charges.

After the driver ended his relationship with the company, he filed for unemployment, alleging the company was his employer.

ABC Test

Under the Indiana Unemployment Compensation Act, a worker is presumed to be an employee (and entitled to unemployment benefits). The alleged employer can rebut this presumption by showing the worker is not an employee, but an independent contractor, under the ABC Test. The employer must

show that:

(a) “[T]he worker is free from the employer’s control and direction”;
(b) “[T]he worker performs a service outside the usual course of the employer’s business”; and
(c) “[T]he worker receives a commission or operates as an independently established trade, occupation, or profession.”

The Indiana Department of Workforce Development (DWD) determined the company did not satisfy the ABC Test and had misclassified the driver as an independent contractor. A hearing before an administrative law judge (ALJ) was held, and the ALJ agreed with DWD that the driver was misclassified.

The company appealed, arguing that it satisfied all criteria of the ABC Test.

Court Decision

The Supreme Court agreed with the company and overturned the agency decision. The Court held the driver was not the company’s employee because he (a) was not under the company’s control or direction, (b) performed a service outside of the company’s usual course of business, and (c) ran an independently established business.

Significantly, the Court recognized that Indiana statutes and case law did not define the “usual course of business” (the second prong of the ABC Test). Therefore, the Court adopted the definition used by Connecticut and New Hampshire, which apply a similar version of Indiana’s ABC Test. The Court held that “if a company regularly or continually performs an activity, no matter the scale, it is part of the company’s usual course of business.” The Court explained that one company can have “more than one course of business,” depending on its regular activities. The Court also explained that the touchstone of the analysis is whether the company and the worker “regularly or continually performed the same activity.”

The Court held the company satisfied its burden of showing the driver was not misclassified under the ABC Test, and the driver was not entitled to unemployment benefits.

Takeaways

The independent contractor question can be difficult to navigate. Under Indiana law, the proper test for independent contractor status can vary based on the claims asserted. The *Q.D.-A* opinion is worth a close reading on what the “usual course of business” means under the Indiana Unemployment Compensation Act. While the Court suggests a fairly straightforward, “same activity” inquiry, it also suggests the activity not only be the same, but be “regularly or continually performed.”

Additionally, the Court’s discussion of the “control and direction” factors in this case helps refine the circumstances under which the independent contractor classification will be upheld.

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