

New Jersey High Court Endorses Test for Employment-Status Disputes: State Wage Laws

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The New Jersey Supreme Court has held “that the ‘ABC’ test derived from the ***New Jersey Unemployment Compensation Act***, N.J.S.A. 43:21-19(i)(6), governs whether [an individual] is an employee or independent contractor for purposes of resolving a wage-payment or wage-and-hour claim.” *Hargrove v. Sleepy’s, LLC*, No. A-70-12 (Jan. 14, 2015).

The Court was asked by the *U.S. Court of Appeals* for the ***Third Circuit, in Philadelphia***, to decide which test a court should apply regarding the classification of an individual as an independent contractor under the ***New Jersey Wage Payment Law (WPL)***, N.J.S.A. 34:11-4.1 to -4.14, and the New Jersey Wage and Hour Law (WHL), N.J.S.A. 34:11-56a to -56a38.

The underlying action arose when the plaintiffs, Sam Hargrove, Andre Hall, and Marco Eusebio, brought an action under the WPL against their employer, Sleepy’s, LLC, asserting “that Sleepy’s *miscategorized them as independent contractors*, and that such misclassification *caused various financial and non-financial losses to them*.” The issue of whether the plaintiffs, who deliver mattresses to customers of Sleepy’s, are employees or independent contractors was submitted originally to the U.S. District Court for the District of New Jersey on cross motions for summary judgment. Using the factors to determine a worker’s status under *ERISA* (29 U.S.C.A. §§1001-1461), the District Court held that the plaintiffs were independent contractors. After hearing oral arguments on appeal, the Third Circuit petitioned the New Jersey Supreme Court for guidance on which test should be applied when determining a worker’s status not only under the WPL, but also the WHL.

After a lengthy examination of the plain language of the WHL and WPL, as well as the regulations implementing the two statutes, the Supreme Court determined “*that the same test or standard should be employed to determine the nature of an employment relationship under both statutes*.” The Court recognized that for the past 20 years, the Department of Labor has declared, without challenge, “that the ‘ABC’ test set forth in N.J.S.A. 43:21-19(i)(6)(A)-(C) should govern employment-status disputes under the WHL.” Thus, the Court decided that the “long-standing approach to resolving employment-status issues” should continue, and also be used under the WPL. The Third Circuit will apply the Court’s decision to the plaintiffs’ WPL claim.

ABC Test

Under the ABC test, a worker is considered an employee unless an employer can satisfy all three of these criteria:

- (1) that “it neither exercised control over the worker, nor had the ability to exercise control in terms of the completion of the work”;
- (2) that the worker performs work outside the usual course of the employer’s business or outside the employer’s place of business; and
- (3) that the worker “has a profession that will plainly persist despite the termination of the challenged relationship.”

The failure to prove even one of the three criteria results in a worker being classified as an employee, rather than an independent contractor.

Bottom Line

There now is no question that New Jersey employers must satisfy the worker-friendly ABC test in employee-status disputes under both the WPL and WHL.

Consequently, employers who use independent contractors may be forced either to reclassify some of their workers as employees, or tailor their contractor relationships in order to satisfy the test. Now is a good time for all New Jersey employers to examine their independent contractor relationships under the ABC test to ensure they satisfy its stringent, worker-friendly standards.

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