

NEWS & INSIGHTS

Independent Contractors and Joint Employer Concerns

BY: [RICHARD L. HACKMAN](#) | [INSIGHTS](#) | [LEGAL UPDATE](#)

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In a decision that should concern all employers who engage independent contractors, a federal appeals court recently held that a Maryland general contractor was the “joint employer” of its subcontractor’s employees for purposes of wage payment liability.

In this case, the Fourth Circuit Court Appeals, which does not govern Pennsylvania employers but does encompass several neighboring states (e.g., Maryland), determined that a joint employment relationship between companies exists when they share or in some way “co-determine ... the essential terms and conditions of a worker’s employment.” In this matter, the court fashioned its own test to determine whether a joint employment

relationship exists. The court's non-exclusive list of six factors to consider in evaluating the "joint employer" issue included: (1) whether and how the two entities—either formally or through an informal practice—"direct, control, or supervise the worker"; (2) whether both companies have the ability to hire, fire, or modify the terms or conditions of employment; (3) the degree of permanency and duration of the relationship between the two companies; (4) whether one of the companies exercises control of the other; (5) whether the work is performed on premises owned or controlled by one of the companies; and (6) if and how the two companies control "functions ordinarily carried out by an employer" including, but not limited to, payroll, use of equipment, benefits, insurance and other management functions.

This ruling may have significant repercussions for health care systems and practices. By way of example, if a practice engages—through an independent contractor or staffing services agreement—a sub-specialty group to perform certain tasks, regardless of the terms of any agreement, this sub-specialty group may be deemed to be employees of the practice. The consequences of a joint employment finding may be significant. Despite treating such individuals as independent contractors, the practice could be responsible for overtime and other unpaid wages, harassment claims, benefits and required payments into both the unemployment and workers' compensation systems. There also exist potential union ramifications inasmuch as this sub-specialty group may be deemed to be a part of any unit of employees who attempt to organize.

Ultimately, the use of the joint employer analysis by the courts (as well as numerous government agencies such as the Equal Employment Opportunity Commission and the Department of Labor) may ensnare those who are not wary. In light of the above, employers should review their practices and agreements with respect to independent contractors and staffing agencies. While there does not exist a bright line test to eliminate completely any potential liability in these situations, there are steps employers can take in order to insulate themselves.

If you have any further questions, please do not hesitate to contact Rick Hackman at Saxton & Stump for further guidance.

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