

Volume 26, No. 10
November 2012

Small Business Notes

Minnesota Department of Employment
and Economic Development (DEED)

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Eighth Circuit Addresses Worker Status Issue for Litigation Purposes

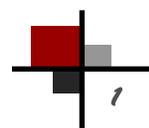
Businesses are familiar with the various “factor tests” used by the Internal Revenue Service and state governments for purposes of distinguishing independent contractors from employees for purposes of payment of wages and withholding of income and employment taxes. See, for example, IRS Publication 15A, *Employer’s Supplemental Tax Guide*, Section 2; and the State of Minnesota factors for independent contractors in the construction industry (Minn. Stat. § 181.723 and in the trucking and messenger industry (Minn. Stat. § 176.043).

In an opinion filed October 31, 2012, the U.S. Court of Appeals for the Eighth Circuit addressed the factors to be considered when litigation between parties involves the determination of employee or independent contractor status. *Pooneh Hendi Glascock v. Linn County Emergency Medicine, PC* [No. 12-1311].

In that case a physician who had signed an independent contractor agreement with the defendant, an Iowa emergency medical provider, later sought to sue the provider on claims of discrimination based on sex, pregnancy, and national origin. The district court gave summary judgment to the defendant concluding that neither the federal nor state anti-discrimination statutes applied to an independent contractor. The Eighth Circuit Court of Appeals affirmed the district court decision.

Citing *Schweiger v. Farm Bureau Insurance Co. of Nebraska*, 207 F.3d, 480 (for federal anti-discrimination claims) and *Loeckle v. State Farm Auto Insurance Co.*, (for state of Iowa anti-discrimination claims) the Court noted that independent contractors are not protected under either the federal or state anti-discrimination statutes. The factors the Court will use to determine employee or independent contractor status center around the hiring party’s ability “to control the manner and means by which a task is accomplished” looking at the twelve factors articulated in the U.S. Supreme Court’s decision in *Nationwide Mutual Insurance Co. v. Darden*, 503 U.S. 318 (1992). Those were: (1) the skill required; (2) the source of the instrumentalities and tools; (3) the location of the work; (4) the duration of the relationship between the parties; (5) whether the hiring party has the right to assign additional projects to the hired party; (6) the extent of the hired party’s discretion over when and how long to work; (7) the method of payment; (8) the hired party’s role in hiring and paying assistants;

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(9) whether the work is part of the regular business of the hiring party; (10) whether the hiring party is in business; (11) the provision of employee benefits; and (12) the tax treatment of the hired party.

In its opinion the Eighth Circuit noted that it looked also to the “economic realities” of the relationship and the terms of the actual agreement. Significantly, the Court wrote “...we have not required any precise number of factors to create a genuine issue of material fact as to whether a hired party is an employee or an independent contractor. Merely showing ‘some aspects [that] suggest an employment relationship is insufficient to survive summary judgment, however. ...We have previously concluded that a hired party was an independent contractor as a matter of law when five *Darden* factors favored that status, two ‘weighed slightly toward’ it, two ‘appeared evenly balanced,’ and three favored employee status.” (Citing *Schweiger* at 486.)

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