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Independent Contractor or Employee?

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With few exceptions employment laws apply only to employees and not to independent contractors. Federal and state laws vary regarding the criteria to legally determine whether an individual is considered an independent contractor or employee. Generally, an independent contractor is an individual that performs services free from the direction and control by the company with regard to both the manner and method that the work is performed. The determination is important since unlike an employee, an independent contractor is not eligible for overtime pay, benefits, unemployment or workers' compensation benefits. Moreover, an independent contractor is exempt from protection under Title VII and the Age Discrimination in Employment Act which protects employees from employment discrimination.

Recently, the 7th Circuit Federal District Court, considered whether a newspaper distributor who claimed she was terminated because she was pregnant had a cause of action for discrimination. In determining that she was not an employee and therefore had no cause of action for discrimination the court relied on the woman's written agreement with the newspaper that described her as an independent contractor. Additionally, the court looked to the "economic realities" of the situation rather than mere labels. In doing so, the court explained that while she received training from the newspaper, she received no benefits or paychecks. Also important to finding her an independent contractor the court stated that the newspaper had limited ability to tell her how to do her work. In that regard, while the newspaper gave her a list of customers she was free to deliver the papers in any order she chose.

As such, to clarify the relationship, the contractor and the business should have a contract which defines the independent contractor relationship. Of course, the best time to determine the legal effect of the relationship is before the commencement of work. As such, it is highly advisable to consult with an attorney to analyze the proposed relationship and to prepare a valid and enforceable independent contractor agreement. For further information, please visit our web site at www.joettedoran.com.

**This article is not intended as legal advice. You should consult with an attorney for individual advice regarding your own situation.*

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