

Independent Contractors Continue To Be Wage and Hour Focus

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The Labor and Employment Practice Group of Williams Kastner continues to see a growth of investigations and lawsuits involving alleged mischaracterization of employees as “independent contractors.” In one case, the Illinois Department of Employment Security determined that delivery couriers working for a messenger service were employees and that the company was therefore liable to make state unemployment fund contributions on their behalf. The employer relied on a prior determination by the Department that the couriers were independent contractors since they were responsible for delivery results, set their own hours, were free to accept or reject delivery requests, and were free to work for other delivery brokers. The couriers also owned their own delivery vehicles.

However, in determining that the Department’s change of heart was correct, the Illinois Court of Appeals ruled that the Department was not forever bound by its prior determination and that the Department correctly determined the couriers were employees since the employer set delivery prices, made delivery assignments, and billed its customers. The couriers, on the other hand, were economically dependent on the employer, failed to make their services available to the general public, and failed to report wages to the Department.

A similar ruling was made by a Massachusetts court in determining that exotic dancers performing in a Boston strip club were employees rather than independent contractors. The employer claimed that its primary business was selling food and liquor and that the dancers were primarily side entertainment. Not only were the dancers not paid by the employer, but they were charged \$35 per night for the opportunity to dance for tips. The Court disagreed with the employer and determined that the dancers were more than a sidelight for the bar, but were integral to the business. According to the Court, the dancers wore the “hat of an employee” versus the “hat of their own independent enterprise.” Both decisions underscore the need to ensure that alleged independent contractors truly retain the requisite ability to control the method and means of accomplishing the contracted-for task.