



Legal Alert: Ninth Circuit Invalidates Contractual Choice of Law Provision; Holds that California Law Applies to Independent Contractor Determination

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Executive Summary: In a recent case, *Ruiz v. Affinity Logistics*, the Ninth Circuit refused to enforce a choice of law provision that designated Georgia law, rather than California law, to govern an agreement entered into and performed in California.

Factual Background

Affinity Logistics Corporation, a transportation company, entered into written agreements with its drivers upon their hire. The agreements include two important provisions. First, the agreements specify that the drivers perform services for Affinity not as employees, but as independent contractors. Second, the agreements include a choice of law provision, which states that Georgia law will govern any dispute that could arise under the agreements.

A driver brought a class action lawsuit against Affinity in California, alleging failure to pay overtime and other similar violations under California law and the federal Fair Labor Standards Act. Liability for the alleged violations hinged on whether the drivers were considered employees of Affinity or independent contractors.

Choice of Law Provision Held to be Invalid

Before the drivers' status as independent contractors or employees could be resolved, the Court was required to decide which law to apply: California or Georgia. In its analysis, the Ninth Circuit considered several questions. First, did the state selected by the parties have a "substantial relationship" to the parties, or did the parties have an otherwise "reasonable basis" to select that state's laws to govern the agreement? Second, would applying the law of the state specified in the agreement contravene an important public policy of California? Third, does California have a substantially greater interest in the resolution of the dispute than the state designated in the agreement?

The Ninth Circuit focused on the second and third questions, answered them in the affirmative, and invalidated the choice of law provision in the driver agreements. It concluded that Georgia law undermines a fundamental public policy in California, because in Georgia, parties may agree to independent contractor status, and courts typically do not disturb that designation. In California, by contrast, almost any work performed for an

employer is presumed to create an employment relationship. To overcome the presumption, the employer must show the worker is performing services as an independent contractor rather than as an employee. Therefore, Georgia law undermines California's employee protection laws.

The Ninth Circuit also concluded that California has a significantly greater interest in the outcome of this case than Georgia. Again, the Court evaluated several factors to determine which state has a greater interest in the outcome of the case: 1) the place the contract was entered into; 2) the place of negotiation of the contract; 3) the place of performance; 4) the location of the subject matter of the contract; and 5) the place of incorporation and place of business of the parties.

Here, the parties' only connection to Georgia was that Affinity was incorporated there. However, the drivers entered into the agreement in California and worked in California, the contract dealt with deliveries in California, and the drivers lived in California. According to the Ninth Circuit, all of these factors weighed in favor of using California law to resolve the dispute. The Ninth Circuit did not resolve whether the drivers were independent contractors or employees, but remanded the question for the lower court to decide under California law.

Employers' Bottom Line:

Although choice of law provisions are common and used frequently by companies that are incorporated outside of California but do business in California, this opinion demonstrates the limited value of these provisions in the employment context. California law provides workers with protections often unavailable in other states, and courts routinely refuse to enforce contractual provisions that undermine these protections.

Employers should also remember that an independent contractor designation in an agreement is not conclusive. While having an agreement that contemplates an independent contractor rather than an employer/employee relationship is useful, employers should carefully examine the nature of the relationship to make sure it meets California's multi-factor test for determining whether a worker is truly an independent contractor or employee. As this case shows, improperly designating employees as independent contractors rather than employees could lead to significant liability under California's wage and hour laws.

If you have any questions regarding this decision, please contact the author of this Alert, Michelle Rapoport, mrapoport@fordharrison.com or the Ford & Harrison attorney with whom you usually work.