ALERTS AND UPDATES

Ninth Circuit Applies California Law to Determine Independent-Contractor Status Despite Choice-of-Law Provision for Texas

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In a rebuff to out-of-state employers seeking to avoid California employment laws, the U.S. Court of Appeals for the Ninth Circuit concluded—in *Narayan v. EGL Inc., et al.*[1]—that California employment laws applied to truck drivers delivering goods in California, despite written contracts stating they were independent contractors and that Texas law would apply.

EGL—an international, transportation, supply-chain-management and information-services company, headquartered and incorporated in Texas—hired truck drivers residing in California to deliver its freight in that state. The drivers signed "Lease Equipment and Independent Contractor Services" agreements in which they acknowledged they were independent contractors, not employees of the company, and that Texas law would govern any disputes arising out of their contracts.

The drivers filed suit in California, claiming they were misclassified as independent contractors and were entitled to unpaid overtime wages, business expenses, meal compensation and other relief under the California Labor Code. They did not pursue any breach-of-contract claims.

At issue was whether an employer could avoid the obligations under the California Labor Code by inserting a clause into an employer-drafted pre-printed form contract in which (1) employees acknowledged they were independent contractors and (2) agreed that the contract would be interpreted in accordance with the laws of another jurisdiction where such an agreement is generally enforceable.

The Ninth Circuit's conclusions about the contract were key. The drivers claimed entitlement to benefits under the California Labor Code that were available only to California employees. If the written word of their contracts governed (*i.e.*, they were independent contractors and Texas law applied), they would not be able to recover under California law. The circuit court found in the employees' favor, reasoning that the California Labor Code, not the contract, was at issue. California law, it reasoned, should apply to define the boundaries of liability under that statutory system.

Having determined that California law applied, the court next considered California's multifaceted test to resolve the issue of whether the drivers were employees. It evaluated in some detail EGL's instructional video, handbooks, forms, instructions to drivers, procedures and practices. It highlighted that the agreements at issue provided for automatic renewal and 30-day-notice termination provisions, noting these were consistent with at-will employment. The court dismissed the express language of the agreement in which the drivers acknowledged that they were independent contractors as "simply not significant under California's test of employment."

Applying California law, the Ninth Circuit concluded that the drivers produced sufficient evidence of an employment relationship to justify a jury trial of their statutory claims against the employer.

What This Means for Employers

For companies headquartered or operating outside California but doing business within the state, labeling a worker as an "independent contractor" may not be enough to avoid employment obligations under California law, and choice-of-law provisions will not be enforced automatically.

Employers utilizing "independent contractors" in California may want to evaluate whether such workers are appropriately classified under that state's law. Among other things, an employer may consider the actual services and skills provided, as well as the length of time, method of payment and permanence of the relationship. Companies may also want to:

- Review and possibly revise agreements with independent contractors who live or work in California
- Avoid formulaic pre-printed forms for these workers
- Reconsider automatic renewals and termination provisions
- Be careful of other provisions that may suggest an employment relationship

Companies may want to closely evaluate forms, training materials, practices and procedures that they use with independent contractors for consistency with independent-contractor status. Modifications to these agreements and practices may be necessary to avoid an outcome as in *Narayan v. EGI, Inc.*

For Further Information

If you have any questions about the information addressed in this *Alert*, please contact any of the attorneys in our Employment, Labor, Benefits and Immigration Practice Group or the attorney in the firm with whom you are regularly in contact.

Note

1. *Narayan v. EGL, Inc., et al.*., 2010 U.S. App. LEXIS 14279 (9th Cir. Cal. July 13, 2010).