Washington State Department of Labor & Industries

November 8, 2021

Relevant Current Case Law for Direction and Control

***In re: Henry Industries, Inc.*, Dckt No. 13 11525 (April 4, 2014)**
The requirement that the worker provide a vehicle while an important part of the contract is not the primary object of the contract—Bd. found sign. the requirement that drivers complete drug, alcohol and background screening; contract term indefinite, "personal" long term relationship with independent contractors).

Burchett v. Dep't of Labor & Indus., 146 Wn. 85 (1927)
State Supreme Court noted that the power of an employer to terminate the employment at any time is incompatible with the full control of the work which is usually enjoyed by an independent contractor, and hence is considered as a strong circumstance tending to show the subserviency of the employee.

Indeed, it has been said that no single fact is more conclusive, perhaps, then the unrestricted right of the employer to end the particular service whenever he chooses, without regard to the final result of the work itself. Id. quoting 14 R.C.L. 72 at 803.

Hubbard v Dep't of Labor & Indus., 198 Wn. 354 (1939)
State Supreme Court noted a long line of cases that have consistently stated that the "power to terminate employment at any time is incompatible with a free control of work usually enjoyed by an independent contractor."

Dana's Housekeeping, Inc., v. Dep't of Labor & Indus., 76 Wn. App. 600, 886 P.2d 1147 (1995)
The court concluded that the housecleaner's personal labor was for the benefit of Dana's Housekeeping and therefore were covered workers. The court wrote: "If the realities demonstrate the labor is for Dana's benefit, the existence of a third party customer does not place the worker outside the scope of industrial insurance coverage. Id. quoting Lloyds, 33 Wn. App. 745, 752, 662 P.2d 391. (1982).

The court also held that the domestic servant exclusion of RCW 51.12.020(1) does not apply to businesses.

The court also disposed of Dana's claim that the relationship with its cleaners was really "an agreement to accept referrals and share a fee" and looked instead at the essence of the work under the contract, not the characterization of the parties' relationship.

Dep't of Labor & Indus. v. Tacoma Yellow Cab, 31 Wn. App. 117 at 124, 639 P.2d 843 (1982)
When determining whether an independent contractor is a covered worker if they had the authority to or in fact did delegate all or part of the work they are contracted to perform, the "realities of the situation" must be looked at, not the mere technical aspect of having workers.

Delivery Express, Inc. v. Washington State Department of Labor and Industries, 9 Wn.App.2d 131, 442 P.3d 637 (2019)
"[B]oth the contractor agreements and the broker-carrier agreements contain non-compete clauses that limit the drivers' ability to solicit business from DEI customers, both during the term of the agreement and for 6 to 12 months thereafter. Such a clause is another strong indication that DEI entered into a contract with the driver for his or her personal skills at delivering packages in an efficient manner, rather than simply leasing a vehicle to effectuate deliveries."

….In re Rainbow International, BIIA Dec., 88 2664 (1990)
Where every aspect of the route manager's job is controlled by the employer and the employer supplies the work as well as the equipment, the fact that the route managers hire helpers and do not believe they are employees does not make them independent contractors. A right to control the work performed and an absolute right to terminate the relationship without liability are inconsistent with the concept of an independent contract and establish an employer-employee relationship

B&R Sales, Inc., v. Dep't of Labor & Indust., (No. 45765-7 II March 10, 2015).
Court of Appeals case involved a floor covering retailer that contracted with installers. The Court held: " that the contractors were "workers" under RCW 51.08.180 because the primary object of their contracts was their personal labor despite their use of expensive specialized tools and equipment."

Dep't of Labor & Indust. v. Lyons Enterprises, Inc., DBA Jan-Pro Cleaning Systems, No. 45033-0-11 (February 2015).
The Court of Appeals held that Lyons' franchisees without employees are covered workers covered by the Board. But franchisees who have employees are not covered, citing *White v. Dep't of Labor & Indus. 48 Wn. 2d 470 (1956).*

Jamison v. Dep't of Labor & Indust., 65 Wn. App. 125 at 133, 877 P.2d 1085 (1992).
The fact that independent contractors, who perform the same work as workers for the firm who are not independent contractors, can and/or do delegate their work under the contract is not in itself dispositive of whether the independent contractors are covered workers or not.

Joint Employer Liability

There is no statutory guidance to support joint employer liability, and we rely on the relevant statutes to properly determine the employer. As of right now, there isn't joint employer liability for workers' compensation other than prime contractor liability (PCL).