



Stradley Named "Go-To Law Firm®" in Employment Law

Stradley Ronon's Employment Practice Group was named by corporate counsel as a "Go-To Law Firm®" for financial services companies.

Stradley Ronon

2005 Market Street
Suite 2600
Philadelphia, PA 19103
215.564.8000 Telephone
215.564.8120 Facsimile
www.stradley.com

With other offices in:
Washington, D.C.
New York, N.Y.
Malvern, Pa.
Cherry Hill, N.J.
Wilmington, Del.
Harrisburg, Pa.



www.meritas.org

Our firm is a member of Meritas — a worldwide business alliance of more than 210 law offices in 70 countries that offers high-quality legal services through a closely integrated group of independent full-service law firms.

Lessons for Every Employer from New Independent Contractor Decision

For many businesses, whether to classify a worker as an employee or independent contractor has always been less than clear. With risks ranging from tax liability to insurance gaps to wage-payment collective actions, classification of employees can be a high-stakes endeavor. A recent New Jersey Court decision serves as a reminder to all employers — operating in any state — of the complexity of these assessments and the critical need to document contracting relationships appropriately.

The New Jersey Decision

As Stradley Ronon previously reported (see http://www.stradley.com/insights/publications/2013/09/employment-newsflash-september-2013jersey-strong__), New Jersey's test for employee versus contractor status led to such confusion that a federal court requested the New Jersey Supreme Court issue a clarifying legal opinion. In response, the New Jersey Supreme Court set a new employee-friendly standard for purposes of determining contractor status under the New Jersey Wage Payment Law (governing the timing and method of wage payments) and Wage and Hour Law (governing minimum wage and overtime) in Hargrove, et al v. Sleepys (see <http://law.justia.com/cases/new-jersey/supreme-court/2015/a-70-12.html>), (A-70-12) (072742) (N.J. S. Ct. Jan. 14, 2015).

The New Jersey Supreme Court acknowledged that varying tests for independent contractor status have evolved over the years through federal and state statutes, as well as a network of federal and state common law court decisions. In an attempt to bring clarity, at least relating to New Jersey wage laws, the New Jersey Supreme Court chose to follow a test for contractor status originating from the state's unemployment compensation law. For purposes of New Jersey wage laws, a worker will now be presumed to be an employee unless the company can demonstrate that the worker (a) has been and will continue to be free from control over the performance of services, both under the contract for service and in fact; (b) the service is either outside the usual course of the company's business or outside of all the company's places of business; and (c) is customarily engaged in an independently established trade, occupation, profession or business (e.g., the enterprise "exists and can continue to exist independently of and apart from the particular service relationship . . . one that will survive the termination of the relationship").

Lessons Learned

- **Assess Carefully.** No determination of contractor versus employee status can account for every potential factual scenario. As the Hargrove Court recognized, most of the so-called contractor tests often result in different determinations on a case-by-case basis. Further, employers should recognize

that no one specific legal standard may exist, and that various requirements may arise under both federal and state statutes and court decisions in their jurisdiction.

- **Get It In Writing.** Contractor agreements should account for variations in state law. For example, a contractor agreement in New Jersey should now highlight the contractor independence, unique services, and independent business considerations outlined in the Hargrove decision. Further, although most states will not view the parties' agreement to contractor status as conclusive, most courts certainly will consider such agreements in the context of the broader analysis. Contractor agreements should also address considerations such as degree of control, lack of exclusivity, scope of services, the contractor's responsibility for costs of operations, indemnification, and the term of agreement. Choice of law and forum selection clauses, even if not always controlling, should be considered carefully.

- **Monitor Duty Slippage.** Often a business relationship commences as an appropriately classified independent contractor relationship, but then over time the relationship slips into one more resembling that of employer/employee. Not only should an assessment of independent contractor status be made at the outset of the business relationship, but employers should also review the relationship at periodic intervals to monitor any risks arising from contractors assuming roles more akin to employees.
- **Consider Insurance Gaps.** Employers should consider requiring contractors to provide proof of their own liability, health and workers' compensation insurance, or speak to their insurance brokers about potential products to lessen the risk that the insurance protections and requirements normally applicable to employees will not apply to contractors.

Stradley Ronon's Employment & Labor Practice Group

Jonathan F. Bloom, <i>chair</i>	jbloom@stradley.com	215.564.8065
Danielle Banks	dbanks@stradley.com	215.564.8116
Michelle K. Carson	mcarson@stradley.com	215.564.8137
Sandra A. Girifalco	sgirifalco@stradley.com	215.564.8064
C. Clark Hodgson III.....	clark.hodgson@stradley.com.....	215.564.8574
Isaac A. Hof.....	ahof@stradley.com	215.564.8013
Samantha Kats.....	skats@stradley.com	484.323.1354
Ian M. Long.....	ilong@stradley.com	215.564.8558
William E. Mahoney Jr.	wmahoney@stradley.com	215.564.8059
Francis X. Manning	fmanning@stradley.com	856.321.2403
John J. Murphy III	jmurphy@stradley.com	215.564.8019
Caitlin E. Oberst.....	coberst@stradley.com	215.564.8151
Michael D. O'Mara	momara@stradley.com	215.564.8121
James F. Podheiser	jpodheiser@stradley.com	215.564.8111
Ellen Rosen Rogoff	erogoff@stradley.com	215.564.8058
Parker V. Sherry	psherry@stradley.com	215.564.8515
Amy E. Sparrow	asparrow@stradley.com	484.323.1353
A. Nicole Stover	nstover@stradley.com	856.321.2418

Information contained in this publication should not be construed as legal advice or opinion or as a substitute for the advice of counsel. The enclosed materials may have been abridged from other sources. They are provided for educational and informational purposes for the use of clients and others who may be interested in the subject matter.