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Clarifying New Jersey's Independent Contractor Versus Employee Test

Companies often retain independent contractors in order to maintain a flexible workforce without incurring certain financial obligations associated with employees. For purposes of federal law, courts apply a “control” test focused on the degree of control exercised over the individual's work and role in the business of the employer. However, some New Jersey courts employ a “hybrid” test, which not only considers the degree of control exerted over the individual, but also economic factors such as the method of compensation, the provision of annual leave, the accrual of retirement benefits, payment of social security taxes, and the parties' intent.

New Jersey employers require certainty under New Jersey law given that payroll taxes, workers' compensation, and liability under state employment laws all hang in the balance. As a result, an opinion from New Jersey's Supreme Court has been requested to clarify the appropriate test under New Jersey law. The request came from the Third Circuit Court of Appeals in the context of a lawsuit brought by delivery drivers in a case captioned Hargrove et al v. Sleepy's LLC, Nos. 12-2540 and 12-2541.

Whether New Jersey will decide to adopt the traditional “control” test under federal law or the broader “hybrid” test under state law remains to be seen. Stradley Ronon will continue to monitor this matter as the situation develops.

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