New Jersey High Court Embraces ABC Test for IC Status

Yesterday, the New Jersey Supreme Court issued a decision finding the “ABC Test” governs whether an individual is an employee or independent contractor for purposes of resolving wage payment and wage and hour claims under New Jersey law in Hargrove v. Sleepy’s LLC, No. 072742 (NJ Jan. 14, 2015).

In the case underlying the Hargrove decision, a federal district court applied a multi-factor right of control test used to define the term employee under ERISA and found a New York-based mattress retailer properly classified owner-operator delivery drivers as independent contractors under the New Jersey Wage Payment Law, N.J.S.A. 34:11-4.1 to -4.14 (the “WPL”) and New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a to -56a38 (the “WHL”).

On appeal, the United States Court of Appeals for the Third Circuit asked the New Jersey Supreme Court to decide the test to be applied to determine whether an individual is an independent contractor or employee under the WPL and WHL.

After examining the arguments set forth by the parties and amici in support of various tests, the Court found the ABC Test should be utilized under both the WPL and WHL. The Court reached this conclusion based at least in part on the deference it afforded the New Jersey Department of Labor, the agency charged with the enforcement and implementation of the WPL and WHL, noting the NJ DOL applies the ABC Test under the WPL and WHL because both statutory schemes aim to further income security. The Court also endorsed the ABC Test (and rejected the more narrow right to control test) relying, at least in part, on various amici representations regarding the “cumulative societal effect of less protection for an increasing number of workers and reduced revenue to the federal and state governments due to unpaid taxes and assessments” stemming from widespread misclassification.

To overcome the presumption of employment the ABC Test imposes under New Jersey law, a putative employer must demonstrate:
A. The presumed employee “has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact;”

B. The service the presumed employee performs “is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed;” and

C. The presumed employee “is customarily engaged in an independently established trade, occupation, profession or business.”

While the three prongs laid out above mirror the ABC Test applied in some jurisdictions, other jurisdictions apply slightly different versions of this test. If you have any questions or need additional information, please contact Greg Feary (gfeary@scopelitis.com), Jim Hanson (jhanson@scopelitis.com), Bob Browning (rbrowning@scopelitis.com), Angie Cash (acash@scopelitis.com) at (317) 637-1777, or Adam Smedstad (asmedstad@scopelitis.com) at (312) 255-7200.