

Contractual Choice of Law Provision Can't Shield Employer From State Wage and Hour Class Action

Labor & Employment Law Update

on August 30, 2022

The Seventh Circuit Court of Appeals ruled last week that a contractual choice of law provision was irrelevant to whether workers were employees or independent contractors and to whether pay deductions were lawful.

A national logistics firm incorporated in Delaware with its principal place of business in Virginia, engaged drivers to pick up merchandise from warehouses in Illinois and deliver those products to customers in Illinois, Indiana and Missouri. The drivers signed "Service Agreements" through which they agreed: their relationship was governed by Virginia law; they were independent contractors; and that their pay was subject to certain specified deductions.

Two of the drivers, both of whom reside in Illinois, filed a class action suit in federal court in Illinois, claiming that they, and other similarly situated drivers, were employees, not independent contractors, and that the deductions made from their pay in accordance with the terms of the Service Agreements violated the Illinois Wage Payment and Collections Act (IWPCA).

Relying on the choice of law provision, the district court found the IWPCA inapplicable, and dismissed the action. The appellate court reversed. As the 7th Circuit observed, it is understandable that a national firm wants one state's laws to govern its labor force, particularly when workers cross state lines in carrying out their duties, but whether a worker is an employee or an independent contractor is a matter of law, not a matter upon which the parties may contract, and further, rights under the IWPCA arise when an employee performs work in Illinois, regardless of whether a written contract exists.

The decision serves as a reminder to employers in all states that:

1. Choice of law provisions, while useful in many contexts, are not a panacea, and generally will not operate to circumvent state and local wage and hour obligations.
2. Whether a worker is an employee or an independent contractor is a matter of law. The parties' characterization of their relationship, whether by contract

or otherwise, is largely irrelevant. This is true not only in Illinois but in states across the country. Because the designation is relevant to a host of obligations enforced by governmental entities -- tax obligations, unemployment compensation, workers' compensation, and the applicability of various federal, state and local employment laws among them -- an employer can face liability for improperly classifying an employee as an independent contractor even when the worker prefers to work as an independent contractor.

3. Employment laws of multiple states can be triggered when workers cross state lines in the course of performing their duties.

Employers should engage experienced employment law counsel to assist them in staying a compliant across multiple jurisdictions.

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