

Independent Contractors in Wisconsin Can Create Additional Liability for Employers in the Form of Negligent Supervision Claims

Labor & Employment Law Update

By Aaron Graf on February 4, 2026

In Wisconsin, negligent supervision claims are only available when there is an employer-employee relationship.

Independent contractor ("IC") or agency relationships do not suffice and, crucially, the individual must be an IC in practice, not just on paper.

This is one of many reasons it is important to actively review and manage your independent contractor relationships to ensure they don't unwittingly morph into employees.

Wisconsin Appellate Court Clarifies Limits on Negligent Supervision Claims

In 2021, a customer was tragically shot and killed in a grocery store parking lot by armed security guards in Milwaukee. The security guards worked for a company that was retained by the grocery store to provide on-premises security. The estate of the deceased customer sued the grocery store for, amongst other things, negligent hiring, training, and supervision ("negligent supervision") of the security guards.

The court of appeals analyzed whether the grocery store itself could be liable for a claim of negligent supervision where the security guards were independent contractors, not employees, of the grocery store. *Est. of Lorenzo v. Marshall Pub. Safety LLC*, 2025 Wisc. App. LEXIS 500, 2025 WI App 44, 417 Wis. 2d 658, 25 N. W.3d 101 (unpublished). The court found that negligent supervision claims in Wisconsin can only be brought where there exists an employer-employee relationship; IC or agency status does not suffice.

For businesses that utilize one or more ICs, this decision again emphasizes the importance of ensuring that those relationships are actively reviewed and managed as IC relationships. While many businesses focus only on the potential risk of back taxes, unpaid overtime and penalties and fines from agencies such as the IRS or DOL, the above highlights another source of potential liability in such situations.

When Independent Contractors Can Become Employees Over Time: A Practical Example

While the situation in *Lorenzo* was extreme and will hopefully never happen for your business, imagine a more realistic scenario: Your company hires an IC, Bob, to occasionally deliver packages for your business. The relationship is set up properly in that Bob owns his own business, contracts with other companies, has his own employee, isn't subject to your direction and control, doesn't use your equipment, is only paid a per delivery flat rate, must have his own insurance, and a proper independent contractor agreement is signed. Great job!

However, as the years pass, you and Bob become comfortable and the independent contractor agreement that was in place lapses without anyone noticing. Bob fires his one employee and is a one-man shop. He now receives enough deliveries from your business that he only delivers for you these days. He consistently spends 35-40 hours a week delivering your packages and sometimes swings by an office happy hour because he has become friends with the staff. You even gave Bob the same \$500 holiday bonus you gave to all your staff because he's become a "part of the family."

That new manager you hired last year decided to save \$1,500 for the annual budget by converting Bob to \$25/hour because the flat rate arrangement was getting too expensive and he didn't consult with you or HR. Oh, and that proof of insurance requirement in the lapsed independent contractor agreement that requires Bob to show proof of insurance sufficient to cover a multi-million dollar claim? Yeah, Bob hasn't done that for the past two years and no one has caught it internally.

To top matters off, unbeknownst to you, since you retained Bob as an IC and never provided him your employee handbook, Bob didn't report to you that he received a citation last year for texting while driving as he was delivering one of your packages.

Then tragedy strikes: While out delivering packages for your company Bob is texting while driving and hits and seriously injures a child getting off a school bus. A lawsuit is brought against your business asserting negligent supervision of your employee Bob. Unfortunately, Bob, while a "great guy," forgot to renew his business insurance last year so your business is the only realistic source of recovery for the child with permanent injuries.

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Suddenly your business is faced with millions of dollars in liability for a negligent supervision claim that it should be able to defeat based on the rationale in *Lorenzo*, but can't because you failed to ensure that your independent contractor didn't morph into an employee over time.

Lessons for Wisconsin Employers Using Independent Contractors

The lessons from *Lorenzo* are straightforward. Although Wisconsin law limits negligent supervision claims to employer-employee relationships, that protection only exists if your IC relationships are *actually* independent in practice.

Even well-intended business decisions, such as changes in pay structure, informal integration into your workforce or a slowly increasing amount of supervision or control, can quietly transform an IC into an employee over time, bringing with it unexpected liability and exposure. Employers may consider taking a moment to:

- **Identify all individuals classified as an independent contractor** and determine whether a well-drafted independent contractor agreement is in place for each;
- **Establish a regular schedule for internal audits** of independent contractor relationships that are designed to identify any independent contractors that are straying too close to employee status and creating unwanted risk; and
- **When areas of risk are identified, proactively manage those situations** not only with the IC, but also by training the internal decisionmakers who may be unknowingly contributing to the risk.

These steps may save your company a lot more than just back taxes and unpaid overtime.

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