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NEW JERSEY DISTRICT COURT DETERMINES TRUCK DRIVERS WERE WRONGFULLY CLASSIFIED AS INDEPENDENT CONTRACTORS UNDER ABC TEST

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A New Jersey federal district court judge in *Portillo, et. al. v. National Freight, Inc. and NFI Interactive Logistics, Inc.*, 2022 WL 2078276 recently determined that delivery drivers for NFI Interactive Logistics (“NFI”) were misclassified as independent contractors and should be considered employees under New Jersey law. That decision could have a significant impact on other pending state and federal court cases concerning the employment status of delivery drivers.

In his written opinion (a copy of which can be obtained by clicking on the link below), Senior United States District Court Judge Joseph Rodriguez stated that the so-called ABC test for determining whether a worker is an independent contractor or an employee should apply to the class of NFI drivers involved in the action. He rejected a claim by NFI that the drivers were exempt from the ABC Test.

The action, a class of drivers who had made deliveries to Trader Joe’s stores, claimed that the deductions NFI made from their pay workers’ compensation insurance, liability insurance and fuel and vehicle repairs were not allowed under the New Jersey Wage Payment Law (“NJWPL”), which governs compensation of employees. Since the action was filed in 2015, Trader Joe’s had switched to a different company for deliveries and most of the class members no longer work for NFI, but the action involved reimbursement for deductions over an eight-year period.

NFI countered that, among other things, the NJWPL did not apply because New Jersey’s Unemployment Compensation Law (“NJUCL”) contains a list of 25 exceptions, including one for drivers of trucks larger than 18,000 pounds, which included all of the plaintiffs who were plaintiffs in the action. NFI specifically contended that its drivers should not be covered by the NJWPL because the New Jersey Supreme Court, in a 2015 decision in *Hargrove v. Sleepy’s, LLC*, 220 NJ 289 (2015) held that another group of delivery drivers was subject to the ABC Test, implicitly included the large truck exception set forth in the NJUCL. NFI asserted that it would be illogical to find that *Hargrove* adopted the ABC Test without also adopting those categories of work to which the ABC Test does not apply.

In his written Opinion, Judge Rodriguez noted that the New Jersey Appellate Division recently ruled in *Kennedy v. Weichert* that the list of exemptions in the NJUCL did not apply in that case, which concerned independent contractor status for real estate sales representatives. But NFI said the court should not follow the *Kennedy* case because that Appellate Division Opinion is an unpublished ruling, and the state Supreme Court has agreed to hear an appeal of the decision.

Judge Rodriguez specifically rejected NFI’s reasoning -- “NFI’s insistence that *Hargrove* silently adopted the NJUCL’s twenty-five exceptions does not comport with the *Hargrove* court’s reasoning or the interpretation of the NJWPL. There is no basis in *Hargrove*’s finding that the ABC test best protects workers under the NJWPL to conclude that *Hargrove* impliedly sought to exclude broad swaths of workers from the NJWPL’s protections.”

In his written opinion, Judge Rodriguez also rejected NFI's claims that the plaintiff drivers did not qualify as employees under the so called "ABC Test." Under that test, a worker is an employee unless he meets the following criteria: (A) the individual is free from control or direction over how he performs his job; (B) the service is either outside the usual course of business for the business for which the service is performed, or that such service is performed outside its premises; and (C) the individual is customarily engaged in an independently established trade, occupation, profession, or business.

The plaintiffs claimed that NFI could not satisfy either section of part B of the ABC Test, while the NFI said it satisfied both sections of that part of the ABC Test.

In his decision, Judge Rodriguez rejected NFI's claim that it satisfied Part B of the ABC Test, saying it hired drivers as employees, as well as contracting with owner-operators, and advertises that it provides "dedicated transportation services", as well as "freight brokerage" and logistics services. Judge Rodriguez concluded "ultimately, the undisputed evidence demonstrates that the delivery services that plaintiffs performed for NFI were part of NFI's 'course of business,' even if NFI also provided logistics services to its clients." "NFI therefore does not satisfy Prong B's "course of business" test."

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