

Client Alert: Are Insurance Agents Employees or Independent Contractors?



Have you analyzed whether your insurance agents are independent contractors or employees? A federal appeals court recently did, and its holding provides some valuable guidance. *Murray v. Principal Fin. Group*, Case No. 09-16664 (9th Cir. 2010)

Patricia Murray sued Principal Financial Group, Inc. for sex discrimination in violation of Title VII. Murray was a "career agent," also known as an insurance agent. The issue was whether Murray was an "employee" or an independent contractor. If Murray was an employee, then she is protected by Title VII.

When determining whether an individual is an independent contractor, the court evaluates "the hiring party's right to control the manner and means by which the product is accomplished." The United States Supreme Court identified the following factors in evaluating "control":

[1] the skill required; [2] the source of the instrumentalities and tools; [3] the location of the work; [4] the duration of the relationship between the parties; [5] whether the hiring party has the right to assign additional projects to the hired party; [6] the extent of the hired party's discretion over when and how long to work; [7] the method of payment; [8] the hired party's role in hiring and paying assistants; [9] whether the work is part of the regular business of the hiring party; [10] whether the hiring party is in business; [11] the provision of employee benefits; and [12] the tax treatment of the hired party.

Murray operated her business as she wanted on a day-to-day basis without instruction from Principal. Murray sold products other than Principal products. Murray decided when and where she wanted to work. Murray even rented her own office space. Murray scheduled her own time off and was not entitled to vacation or sick days from Principal. Murray received commissions only, and reported herself as self-employed to the IRS. These factors contributed to the conclusion that Murray was an independent contractor.

Although Murray received some benefits, had an at-will contract, was subject to some minimum standards imposed by Principal, and had a long-term relationship with Principal, these factors were insufficient to make her an employee of Principal.

The government recently hired hundreds of new investigators to review "independent contractor" classification. If you engage independent contractors, you should conduct a compliance audit to ensure that they are not, in fact, "employees."

If you would like to discuss how this subject may affect your business, please contact one of our lawyers below:



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