

WASHINGTON CASE UPDATE

When Independent Contractors Sue for Discriminatory Employment Actions

From the desk of John Kreutzer: Does an independent contractor qualify as an “employee” under the Washington Law Against Discrimination (WLAD)? Read on to learn how the Division One Washington Court of Appeals addresses this important question.

Claims Pointer: Under the WLAD, independent contractors constitute employees. As such, they are entitled to bring claims for discriminatory actions prohibited by the WLAD against the businesses with which they contract.

case in point...

Currier v. Northland Services, Inc., --- P.3d ---, 2014 WL 3842954 (Wash.App. Div. 1)

Larry Currier was employed as an independent contractor with Northland Services, Inc. (NSI) from 2005 to 2008. One day while at work, Currier overheard another independent contractor making a racially disparaging comment about Mexicans to a Latino independent contractor. Currier, upset by the comment, reported the incident to NSI's quality assurance manager, who in turn informed Jim Sleeth, an NSI dispatcher, and Patrick Franssen, another NSI dispatcher. Two days later, Sleeth and Franssen met with Larry Graham, the NSI terminal operations manager, and informed him that Currier's contract needed to be terminated due to customer service issues. Currier's contract was terminated that same day. Currier, however, brought suit against NSI, claiming that NSI's termination of his contract was retaliatory discharge in violation of the Washington Law Against Discrimination (WLAD). At trial, the court found in favor of Currier. NSI appealed.

The Washington Supreme Court has repeatedly stated that the WLAD, enacted to eliminate discrimination, embodies a “public policy of the highest priority.” As such, its provisions will be liberally construed to accomplish its purpose. In relevant part, the WLAD provides: “The right to be free from discrimination because of race, creed, color, national origin . . . is recognized as and declared to be a civil right. This right shall include, but not be limited to the right to obtain and hold employment without discrimination.”

The WLAD also provides protections to any person engaged in statutorily protected activity from retaliation by an employer or other person. Specifically, “it is an unfair practice for any employer . . . to discharge, expel, or otherwise discriminate against any person because he or she has opposed any practices forbidden by this chapter”

To bring a claim for retaliatory discharge, the plaintiff must show that (1) they engaged in statutorily

protected behavior, (2) they suffered an adverse employment action, and (3) there was a causal link between their activity and the adverse employment action. NSI argued that WLAD's retaliatory discharge statute did not apply because (1) as an independent contractor, Currier was not an “employee” within the meaning of the statute and (2) Currier's activity was not statutorily protected because he did not oppose a specific employment practice of his employer.

In examining whether RCW 49.60.030 protects independent contractors, the court noted that the Washington Supreme Court has held that an independent contractor may bring an action for discrimination in the making or performance of contract for personal services where the alleged discrimination is based on sex, race, creed, color, national origin or disability. The court reasoned that the broad language of RCW 49.60.210(1) also supports the conclusion that the WLAD does not limit claims to those brought by employees against employers. Thus, it held that RCW 49.60.030 and .201(1) protected Currier as an independent contractor.

Currier satisfied the first element of a claim for retaliatory discharge. The WLAD does not recognize a difference between employees and independent contractors for purposes of bringing a claim. Furthermore, Currier's complaint regarding the racist comment constituted a protected activity.

Currier also satisfied the two remaining elements of a claim for retaliatory discharge. Despite NSI's assertions to the contrary, his termination, the adverse employee action, was supported as being causally related to his complaint regarding the racial comment. For one, the termination occurred just two days after Currier's complaint to NSI. Additionally, there was no documentation to support the “customer service issues” NSI claimed. Having satisfied all of the elements of a claim for retaliatory discharge, the court of appeals affirmed the lower court's ruling in favor of Currier.



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