



9th Circuit Holds One Test for Independent Contractor Status – Common Law Agency Approach

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The Court in *Murray v. Principal Financial Group* (No. 09-16664, opinion by Judge Schroeder) examined and articulated the factors a court should look to when determining whether an individual is an independent contractor or employee for purposes of Title VII. In *Murray* the plaintiff, Patricia Murray, is a "career agent" for Principal Financial Group where she sells products including annuities, 401(k) plans, and insurance.

The underlying question examined by the Court was simply whether or not Ms. Murray could bring an action against Principal Financial Group for violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e). Only employees (and not independent contractors) can bring claims for violations of Title VII. The Court sought to clarify what the appropriate test was for determining the employment versus independent contractor status of an individual performing work for a company

The Court affirmed that Murray was an independent contractor because she was free to operate her business without day to day intrusions, decides when and where to work, maintains her own office where she pays rent, and because Principal Financial Group does not control the manner and means by which Murray accomplishes her job. The Court's ruling should provide some further clarity for employers and attorneys looking for the proper test when determining whether to classify somebody as an independent contractor or employee.

This is a dicey area and one in which employers can face serious liability for improperly classifying somebody. It is important to remember that in addition to examining the factors, before determining that somebody is an independent contractor an agreement reviewed and acknowledged by the independent contractor clearly articulating the individual's independent contractor status and the control which he/she maintains in performing his/her daily work will go a long way to protecting employers from liability.

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