Florida Home Healthcare Worker Found to be Misclassified as Contractor – An Employer's Survival Guide to Avoid Similar Fate

Insights
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In a stunningly broad ruling that should send shivers down the spine of every home healthcare agency that uses an independent contractor workforce, a Florida federal court ruled on April 12 that a home healthcare worker who provided in-home healthcare and companion services to elderly individuals and adults with disabilities was actually an employee, not a contractor. As a result of this misclassification finding, the worker will be entitled to three years' worth of unpaid overtime wages, plus liquidated damages in an amount double her unpaid wages owed – not to mention the door is now open for similarly situated workers to line up at the courthouse steps as well. This finding also opens the employer to risks of related consequences with the IRS and under other employment laws not before the Court. What can your business learn from this dramatic development to avoid facing the same consequences?

Home Healthcare Worker Achieves Significant Victory

In the case of *Mason v. Pathfinders for Independence, Inc.*, Janet Mason worked for more than three years, from April 2015 until November 2018, as both a personal support staff member (live-in companion) and as a support living coach for Pathfinder clients in the Tampa area. She was classified by her agency as an independent contractor, thereby not entitled to receive overtime wages if she worked more than 40 hours in a one-week pay period. If she had been classified as an employee, of course, she would have been entitled to earn overtime wages when she had done so. Most home health employees are eligible for overtime, except for some registered nurses that may qualify for an exemption. Mason was being paid $1,500 a month as a personal support staff member and $20 an hour as a support living coach.

Mason contended she routinely provided around the clock care for Pathfinders' clients, often working up to 84 hours a week, and contended she was never paid overtime. Pathfinders contended she was an independent contractor and therefore not entitled to overtime pay. Failure to properly pay overtime wages to a non-exempt worker is a violation of the Fair Labor Standards Act (FLSA), and Mason brought suit under the federal law alleging she had been misclassified as a contractor. On April 12, the court ruled in her favor and determined she had proven her case sufficiently enough to earn a complete judicial victory.

6-Part Legal Test Pointed to Employee Status

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The judge analyzed the applicable facts and law under the 11th Circuit's version of the six-part "economic realities" test for determining employee versus contractor status. He found that Mason met five of the six tests for classification as an employee, which was more than enough to justify a ruling in her favor.

1. ***The nature and degree of the alleged employer's control over the alleged employee's work.***

   The judge found Pathfinders exerted significant control over Mason's work by requiring her to adhere to multiple policies in their employee handbook (even though many were state-mandated requirements), giving her a company cell phone, requiring her to notify Pathfinders of any changes in a patient's medications with documentation, requiring her to notify management if she needed to leave a patient unattended, and requiring she obtain approval from Pathfinders before sending any documents on a patient's behalf. Further, Mason needed to call in to her manager on specific days to report her hours worked or leave a voicemail, and needed to submit multiple monthly reports, intervention logs, and incident reports.

2. ***The alleged employee's opportunity for profit or loss depends on their managerial skills.***

   Further, the court found Mason did not have an opportunity for profit and loss based on her own managerial skills. Pathfinders facilitated her placement with families even though the family had the final say and Mason's rates were set based on the maximum agency reimbursement rate.

3. ***Whether the alleged employee's services required a special skill.***

   The court also concluded that Mason did not possess any special skills acquired on her own to perform her duties but instead learned how to do her job from training by Pathfinders.

4. ***The permanency and duration of the working relationship.***

   Mason also demonstrated permanency in her relationship with Pathfinders given her three-and-a-half-year tenure with the company.

5. ***The extent to which the services are an integral part of the alleged employer's business.***

   Finally, the court concluded that Mason's services to patients was an integral part of Pathfinders' business.

6. ***The alleged employee's investment in equipment or materials and employment of other workers.***

   The only factor the court did not find Mason met was having made any substantial investments in her business to help it be successful. Pathfinders did not provide Mason with any equipment or materials. However, when examining a balancing test of six factors, having simply one element fall in the company's favor (or coming up as a draw) was not enough for the court to deny Mason's claim.

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Adding Expensive Insult to Injury

In every wage-and-hour dispute the court must whether the employer's actions were "willful" – meaning they knew how to pay their workers correctly but still failed to do so. With a willful finding comes the danger of liquidated damages, which double the base amount of overtime wages owed to a worker as a penalty for preventing the worker the use of the overtime wages they'd earned but were denied. Also, the FLSA typically only allows a court to assess damages looking back two years from the date of the plaintiff's complaint – unless the employer acted willfully in failing to pay workers properly, in which case it can look back three years.

Amazingly, the court found that Pathfinders "had reason to know they were in violation of the FLSA's overtime provisions," because, from June 2014 to August 2016, the U.S. Department of Labor (DOL) conducted a full investigation into Pathfinders' classification of workers holding the same positions as Mason. The DOL concluded the personal support staff members and support living coaches were employees, not independent contractors, and requested that Pathfinders pay 12 employees close to $45,000 in overtime back pay. Pathfinders did not agree to pay those back wages.

What's worse, that investigation was the second time the DOL had investigated Pathfinders for violations. In 2007, the DOL concluded that the home healthcare agency owed three workers nearly $1,500 in overtime back wages, which Pathfinders paid. The court said, "Considering those two investigations, Defendants had reason to know they were violating the FLSA," thereby ruling in Mason's favor on her claim for liquidated damages *and* claim for willfulness.

The DOL has placed increased emphasis on investigating home health industry clients.

The court has not yet calculated the amounts owed to Mason, but they are likely to be substantial. She will also be entitled to recover her attorneys' fees and costs. And worse for Pathfinders – the door is now wide open for additional claims by similarly situated workers, so they can expect to field additional complaints in the coming months.

Takeaways for Home Healthcare Agencies

The two biggest takeaways for home healthcare agencies are glaringly clear. First, if you have any home healthcare workers in your workforce that you classify as independent contractors, use this decision as a warning to conduct an audit of your practices. You will want to engage your legal counsel to ensure you are aware of the proper independent contractor classification law in effect in your jurisdiction – unfortunately there are several different tests that exist across the country – and then work with them to assess your workforce. Just because you are doing business similarly to others in the industry does not mean you are protected in any way from these issues. This is true even if you are a Nurse Registry in Florida: the State's statute deeming your workers to be independent contractors will not save you from potential liability under the FLSA. Doing such an audit with your legal counsel could afford you some protection in the form of attorney-client privilege. While you might be nervous about your system given the harsh ruling in this case, there

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privilege. While you might be nervous about your system given the harsh ruling in this case, there are some strategies that can be deployed to solve your problems while minimizing damage, and sticking your head in the sand about potential legal liability is never a good approach.

Second, if the DOL is on or in your premises ***twice*** in a decade to investigate, and tells you ***twice*** you're not paying workers properly, listen to them and take appropriate corrective action. Fix what they're telling you is wrong, even if you don't agree with their analysis. Either pay your workers properly or watch their hours worked religiously, so that you can cut off or at least reduce their overtime hours. It is understandable, of course, that it is difficult if not impossible in the current environment to find a sufficient number of workers to fill all the hours that need to be worked. But you need to re-double your efforts at recruiting or otherwise correct your relationship with their workers, so you're not staring down the barrel of multiple wage-hour claims for unpaid overtime.

Conclusion

We will monitor the situation and provide updates as developments occur, so make sure you are subscribed to Fisher Phillips' Insight system to get the most up-to-date information. If you have further questions, contact your Fisher Phillips attorney, the author of this Insight, any attorney in our Healthcare Industry Team, or any attorney in our Wage and Hour Practice Group.

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