



# Contractor Agreements Not Worth The Paper They're Printed On, Part 785

Insights

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You can have the best independent contractor agreement in the world. You can hire the best gig economy lawyers in the country (ask us, we have some ideas) to draft the absolute crown jewel of a document for you, capturing the latest and greatest legal developments and considering every last aspect of your business. But yet it's not going to save you from a misclassification problem if the underlying relationship isn't compliant with your state's contractor laws. [An Alabama federal court](#) just provided yet another lesson on this point in a case involving a delivery driver.

## Company Cites To Independent Contractor Agreement To Try To Escape Liability

Steve Nemo alleges that he was employed by R.R. Donnelley Logistics Services for a short period of time in 2017. He claims that he faced discrimination on account of his race, gender, and age during his three months on the job, and brought Title VII and ADEA claims against the company. His complaint says that an RRD hub supervisor supervised his work and ultimately fired him for illegal reasons. The problem for Nemo? He was an independent contractor in Donnelley's eyes, who in fact had signed a contractor acknowledgment form with a subcontracting company. And because contractors do not have legal standing to bring employment discrimination claims under Title VII or the ADEA, Donnelley asked the court to quickly dismiss Nemo's complaint. The prime piece of evidence in Donnelley's defense? The top-notch independent contractor agreement, confirming that Nemo was a contractor and had no employment rights.

The court began its analysis by setting the foundation for any misclassification claim: it would apply the 11th Circuit's "economic realities" test to determine whether the company had the right to control the worker and conclude whether Nemo could properly allege he was an employee. It cited to a seminal 1982 case—*Cobb v. Sun Papers, Inc.*—that calls for courts to examine 11 separate factors in making this determination. One of these factors: "the intention of the parties." Given the fact that the parties had agreed in writing to establish an independent contractor relationship, Donnelley had to feel pretty good about its chances of having the case dismissed. The agreement not only acknowledged that Nemo was a contractor, but provided for a structure commonly seen in contracting relationships, including the fact that Nemo would have to cover his own expenses (such as fuel) and would have to provide his own equipment and tools. It also specifically said that Nemo would "receive no supervision about how to perform agreed-upon delivery services."

## "Documents Only Tell Part Of The Story"

In the court's February 8 opinion, however, it noted that the agreement was relevant, "but the documents tell only part of the story." It peeled back the document and looked at the actual relationship to make its determination about control, examining the underlying allegations brought by Nemo to determine whether they would form the basis of an employment relationship. Among them: the hub supervisor assigned him delivery routes, the hub supervisor's boss could likewise assign routes and could even overrule the hub supervisor, Donnelley required drivers to use a specific delivery app on their phones to handle the work, and hub supervisor supervised his day-to-day work. Further, Nemo submitted evidence to demonstrate that he communicated with Donnelley managers about "payday," obtaining a company ID badge, taking a mandatory drug test, and specific instructions on carrying out deliveries. In fact, he received "payroll" checks from Donnelley to compensate him for his services.

When the two were compared—the world contained in the contractor agreement against the reality as alleged by Nemo's complaint and evidence—the court found inconsistencies that led it to rule in Nemo's favor.

- While the agreement said Nemo would receive no supervision about how to perform deliveries, Nemo alleges that the hub supervisor directed the work of Nemo and other drivers.
- Although the agreement said Nemo would have to provide his own equipment and tools, other evidence demonstrated that Donnelley provided an electronic program to aid the drivers in making deliveries.
- The agreement said he would be paid on a per-contract basis, but Nemo presented evidence that he received payroll checks.
- And while the agreement noted that drivers could reject any delivery opportunity and had no obligation to offer delivery work continually, Nemo contended that the hub supervisor and his boss instructed drivers that they had to make certain deliveries.

The inconsistencies were too much for the court to handle. They led the judge to deny Donnelley's motion to dismiss (and accompanying summary judgment motion) and rule in Nemo's favor, allowing him to proceed with his claim.

The lesson for gig businesses? It's simple. Having a well-drafted independent contractor agreement is very important—one that is compliant in the state(s) in which you operate, one that is up-to-date and captures all of the latest legal developments, and one that is drafted or approved by counsel familiar with the gig world. But it is by no means the end-all-be-all when it comes to establishing your relationship status with your workers. You need to ensure that the realities of the relationship establish the critical elements necessary to prove contractor status. A valid agreement is but one piece of the puzzle, and not any sort of impenetrable magic shield automatically rendering misclassification claims null and void.

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