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When Is It too Late to Claim Discrimination?

*By Floyd Anderson, Esq.
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One of the most confusing areas of employment law is determining when employees must file claims about discriminatory treatment. Two very recent cases, one pending in the US Supreme Court, one decided by the Massachusetts Supreme Judicial Court highlight the many sources of potential problems that plague this very important area of the law.

The United States Supreme Court is currently considering a case that may provide guidance about the time limits for making Federal employment discrimination claims. The Federal employment discrimination law, commonly known as

Title VII, states that an employee must file a claim with the Equal Employment Opportunity Commission ("EEOC") or a State agency, such as the Massachusetts Commission Against Discrimination ("MCAD"), within "one hundred and eighty days after the alleged unlawful employment practice occurred."

In the case currently before the Supreme Court, *Ledbetter v. Goodyear Tire & Rubber Co.*, the employee, Lily Ledbetter had worked for Goodyear at a plant in Florida for a number of years and eventually brought a discrimination

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Employee or Independent Contractor?

The legal distinction between an employee and an independent contractor may seem like a subject suitable only for a law school exam, but it has real-life significance for both employers and employees.

Considering just federal taxes, for example, if a worker is an employee, the employer must withhold income tax and the employee's part of Social Security and Medicare taxes. The employer also is responsible for paying Social Security, Medicare, and unemployment taxes on wages. An employee can deduct unreimbursed business expenses if the employee itemizes de-

ductions and the expenses are more than 2% of the adjusted gross income.

If the worker has independent contractor status, however, there is no withholding, and the contractor is responsible for paying the income tax and self-employment tax. In that situation, it also may be necessary to make estimated tax payments during the year. An independent contractor can deduct business expenses, but on a different schedule of the tax return than is used by an employee.

So how do you tell the difference between an

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Firm News

Rudolph Friedmann Lawyers Named Massachusetts Super Lawyers



Jim Rudolph

is a four-step process involving a statewide survey of all attorneys practicing law for five years or more. The final selection is determined partially by peer evaluation in each practice area. We are very proud that so many of our lawyers received this distinction.



Jon Friedmann

New Members of the Firm

Floyd H. Anderson has joined our firm as a new litigation associate. Floyd is a graduate of Stanford University (BA) and Boston University School of Law (JD). Floyd is an experienced litigator having been a member of the Massachusetts Bar since 1978. Among his areas of expertise are employment law, commercial and real estate litigation and personal injury law. Floyd is a resident of Newton, MA and in his spare time he enjoys golf and helps with the football program for Newton. Floyd has two children ages 14 and 17.

Herbert Weinberg has joined the firm as Of Counsel. He is a bankruptcy specialist and has been a member of the Massachusetts Bar since 1987. Herb also resides in Newton with his wife and four children who keep him constantly busy.



Floyd Anderson



Bob Shaer



Jim Singer



Herb Weinberg

Employee or Independent Contractor

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employee and an independent contractor? There is no single, quick answer. The particular facts of each case must be examined. However, relevant facts can be grouped into three general categories: behavioral control; financial control; and relationship of the parties.

Behavioral Control

The focus here is on who has the right to control how a worker does the work, rather than simply on the end result of the work. If a business has that right, the worker is an employee; if the worker retains that right, he is an independent contractor. The more that a worker gets instructions or training on how the work is to be done—such as determining what equipment to use, hiring assistants, or deciding where to get supplies—the more likely it is that the worker is an employee.

Financial Control

Apart from the actual performance of work, there is the question of a right to control the dollars-and-cents part of the work. Rather than having a direct financial stake in the business, an employee essentially works for a paycheck and maybe some reimbursed expenses. Some factors pointing more toward an independent contractor status include a worker's significant investment in the work, his or her lack of a right to reimbursement of even high business expenses, and his or her potential to realize a profit or suffer a loss.

Relationship of the Parties

This factor considers how the parties themselves perceive their relationship. While an independent contractor, as the term suggests, is on his own concerning benefits, a worker who is provided insurance, retirement benefits, or paid leave is probably an employee. Sometimes the clearest picture of a worker's status is to be found in a written contract. The parties' intent, as shown in a contract, can be decisive, especially if the other factors do not lead to a conclusive answer.