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Federal Court Finds that Discrimination Laws Apply to Protect Employee from Harassment by an Independent Contractor

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With few exceptions employment laws apply only to employees and not to independent contractors. Federal and state laws vary regarding the criteria to legally determine whether an individual is considered an independent contractor or employee. Generally, an independent contractor is an individual that performs services free from the direction and control by the company with regard to both the manner and method that the work is performed. Because the designation of an individual as independent contact has significant legal consequences for the individual and the business, the relationship should be carefully analyzed and a contract should be prepared which details the terms of the relationship.

The determination is important since unlike an employee, an independent contractor is not eligible for overtime pay, benefits, unemployment or workers' compensation benefits. Moreover, an independent contractor is exempt from protection under the federal and state laws that protect employees against discrimination. These laws include Title VII (race, color, religion, sex or national origin), the Age Discrimination in Employment Act (40 years of age and older) and the Americans with Disabilities Act. However, recently an Illinois Federal Court ruled that protection against workplace harassment under Title VII did apply to hold a company liable for the actions of its independent contractor where the company knew or should have known of the harassment by the independent contact against its employee.

In *Dunn v. Washington County Hospital*, (05-1277, decided November 17, 2005) the 7th Circuit Court of Appeals held that the employer was responsible for the protection of its own employees and the designation of an individual as an independent contractor was irrelevant if the employer failed to respond to the complaints of the employee. This recent decision reiterates a now long standing opinion of the United States Supreme Court which outlined the importance for employers to have a written policy against harassment which is distributed to all employees. The policy should inform the employee as to what constitutes illegal discrimination and where to make a complaint if they are a victim of discrimination or harassment whether by another employee, independent contractor or customer. Importantly, once the employer knows of the harassment, it has a legal duty to stop the behavior. For additional information regarding discrimination, please visit our web site at www.joettedoran.com

**This article is not intended as legal advice. You should consult with an attorney for individual advice regarding your own situation.*

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