Patterson Belknap Webb & Tyler LLP

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# New York's Highest Court Rules that Yoga Instructors are Independent Contractors: But Can Other Employers Hold that Pose?

The New York State Court of Appeals and New York City recently provided additional guidance for – and imposed additional requirements on – New York employers that use independent contractors.

In *In re Yoga Vida NYC, Inc.* No. 130, 2016 N.Y. LEXIS 3216 (Oct. 25, 2016), the New York Court of Appeals further explained how workers may properly be classified as independent contractors, overturning a decision by the Unemployment Insurance Appeal Board and concluding that a group of yoga instructors were not employees. And on October 27, 2016, the New York City Council unanimously passed the "Freelance Isn't Free Act," which establishes and enhances protections for independent contractors in New York City.

*In re Yoga Vida NYC, Inc.*

In *In re Yoga Vida NYC, Inc.*, the New York Court of Appeals considered whether certain instructors who worked at Yoga Vida NYC, Inc. were independent contractors or employees. Independent contractors (unlike employees) are not protected by a number of employment laws, including guarantees of minimum wage, overtime compensation, insurance, and workers' compensation. Prior to the decision of the Court of Appeals, the Department of Labor held Yoga Vida responsible for unpaid unemployment contributions for certain yoga instructors whom Yoga Vida had classified as independent contractors.

When determining worker classification under New York law, multiple factors are used to determine whether the worker is an employee or an independent contractor. A list of factors is available at the Department of Labor's web page here. The most important factor is whether the employer exercises supervision, direction, and control over the worker.

In *Yoga Vida*, the Court found that the instructors were not employees based on the following facts:

- The instructors set their own hours.
- The instructors chose whether to be paid hourly or on a percentage of sales of the classes that they taught, and they were paid only if a certain number of students attended their classes.
- Instructors could work for competitor studios, and were free to inform their students at Yoga Vida about the other classes that they taught at those studios.
- Instructors were not required to attend meetings or receive training.

The Court noted that while Yoga Vida did exercise some "incidental control"—such as determining whether the instructors had proper licenses and publishing a class schedule on its website—this was not enough to support a conclusion that the instructors were employees. And the Court reached its decision despite a number of facts pointed out by the dissent supporting an employment relationship, including that: (i) Yoga Vida recruited its clients, determined the fees to charge for classes, and collected the fee directly from the students, and (ii) Yoga Vida placed the class schedule on its website, and once the class was posted, the instructors could not alter the time or length of the class or the type of class that was taught, and were responsible for finding a replacement instructor if they could not teach their class.

*Yoga Vida* confirms that factors such as an individual's ability to set his or her own schedule and to work for competitors can be very important when supporting an independent contractor classification. But classification decisions are fact-intensive; importantly, the *Yoga Vida* analysis may not aid employers in different contexts, particularly those employers engaged in different types of business.

Employers must also consider guidance about employee and independent contractor classification under federal law, including from the IRS and the Federal Department of Labor. As we explained in a recent client alert, the Wage and Hour Division of the United States Department of Labor issued guidance in 2015 that emphasized its view that most workers are employees for purposes of the Fair Labor Standards Act (FLSA). While the nature and degree of the employer's control is one relevant factor under federal law, the Wage and Hour Division focuses on numerous other factors, with the "ultimate determination [focused on] whether the worker is really in business for him or herself (and thus is an independent contractor) or is economically dependent on the employer (and thus is its employee)."

The Freelance Isn't Free Law

The New York City Council recently passed the "Freelance Isn't Free Law"; the bill awaits Mayor Bill de Blasio's signature. The "freelancers" protected by the law are defined as individuals who are retained as independent contractors. Under the law, whenever an individual or business seeks to retain the services of a freelancer for a contract that is valued at $800 or more, the contract must be in writing. The written contract must define the services that are to be provided by the freelancer, the value of the services, and the rate and method of compensation.

The law is intended to provide protections against non-payment of freelancers by the hiring party. Under the law, the party that hires the freelancer must pay the freelancer on or before the date compensation is due under the contract. If the contract does not specify a payment date, payment is due to the freelancer no later than 30 days after the completion of the freelancer's services. The law prohibits the hiring party from requiring the freelancer to accept less compensation than the amount previously agreed to as a condition of timely payment. Hiring parties may not retaliate against freelancers who exercise their rights under the law.

Significantly, the law attempts to dissuade non-payment by providing for double damages for a freelancer who is not paid on time and in accordance with the law. Aggrieved freelancers can file complaints with the director of the New York City Office of Labor Standards or bring a civil action directly – and under the law, they have up to six years to do so.




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