

Memorandum

To: David Lawrence
 From: Jennifer Aniston
 Date: February 23, 2016
 Re: Workers' Compensation Claim

Dear Mr. Lawrence:

Ms. Anderson would not be considered the employer of Rick Greer and therefore would not be held personally liable for Mr. Greer's injury under the Workers' Compensation Act.

The main issue is whether Mr. Greer would be considered an independent contractor or an employee of Ms. Anderson's. The Franklin courts use the right-of-control test as well as the "Doyle factors" to determine whether an individual is an independent contractor or an employee.

The Right-of-Control Test

Doyle v. Workers' Compensation Appeals Board (Fr. Sup. Ct. 1991) lays out the right-of-control test under which Ms. Anderson's relationship with Mr. Greer should be analyzed. In *Doyle*, the court found that the unskilled harvesters working for the defendant grower were the employees of the defendant. Therefore, the defendant was held personally liable for any injuries arising out of the unskilled harvesters employment.

Doyle outlined the right-of-control test by finding that the defendant grower "exercised pervasive control over the operation as a whole" and that "all meaningful aspects of the relationship were controlled by the defendant grower."

In the present case, Ms. Anderson was not exercising pervasive control over the operation as a whole, as she was merely interested in the result of the repairs. Ms. Anderson was engaged in the rental property business and as a semi-regular part of her business, she needed the assistance of a professional to conduct repairs to her units. Although it is undisputed that Ms. Anderson has control over the rental property business, there is no evidence showing that Ms. Anderson attempted to control the manner or means in which Mr. Greer accomplished the task. In fact, Ms. Anderson explicitly stated that she did not "micro-manage" Mr. Greer and that she was only interested in ensuring that the project turned out the way she wanted it to.

Further, *Harris v. Workers' Compensation Appeals Board* (Fr. Ct. of Appeals 2003) states that "a person who engages an independent contractor to perform a job for him or her may retain broad general power of supervision and control as to the results of the work so as to ensure satisfactory performance of the contract—including the right to inspect, to stop the work, to make suggestions or recommendations as to the details of the work, or to prescribe alterations or deviations in the work—without changing the nature of the independent contractor relationship or the duties arising from that relationship." Therefore, Ms. Anderson had the power to supervise Mr. Greer and even to comment, suggest, or otherwise engage in the work Mr. Greer was doing without changing the relationship from independent contractor to employer-employee.

Therefore, Ms. Anderson did not maintain the "right-of-control" over Mr. Greer.

The Doyle Factors

In addition to laying out the "right-of-control" test, *Doyle* set the standard for the factors used to determine whether an individual is an independent contractor or an employee. According to *Doyle*, these factors are largely derived from the Restatement (Second) of Agency.

The *Doyle* factors are discussed in *Robbins v. Workers' Compensation Appeals Board* (Fr. Ct. of Appeals 2007). In *Robbins*, the appellant, Matthew Robbins, was determined to be an independent contractor of the restaurant for which he conducted gardening, painting, fixing pipes, and removing graffiti. There are many similarities between *Robbins* and the present case, including the nature of the work both Mr. Robbins and Mr. Greer are engaged in. Both are engaged in the activities of conducting repairs and maintenance for another business who carries on a separate primary result. *Robbins* used the *Doyle* factors to determine whether Mr. Robbins was an independent contractor or an employee of the diner.

The *Doyle* factors are: 1) whether the worker is engaged in a distinct occupation or an independently established business; 2) whether the worker of the principal supplies the tools or instrumentalities used in the work, other than those customarily supplied by employees; 3) the method of payment, whether by time or by the job; 4) whether the work is part of the regular business of the principal; 5) whether the worker has a substantial investment in the worker's business other than personal services; 6) whether the worker hires employees to assist him; 7) whether the parties believe they are creating an employer-employee relationship; and 8) the degree of permanence of the working relationship. The *Doyle* factors must be considered not as separate tests, but instead combined to determine whether an individual is an independent contractor or an employee. "The process of distinguishing employees from independent contractors is fact-specific and qualitative rather than quantitative." *Robbins v. Workers' Compensation Appeals Board*, (Fr. Ct. of Appeals 2007).

Here, factor one is met, as Mr. Greer is engaged in an independently established business. In fact, Ms. Anderson first learned of Mr. Greer's services through an online ad in the Yellow Pages for "Greer's Fix-Its." The facts do not indicate how long Mr. Greer was engaged in his independently-owned fix-it business, but it is apparent that Mr. Greer intended to hold "Greer's Fix-Its" out as a business through his use of the Yellow Page advertisement. Therefore, it is clear that Mr. Greer is engaged in an independently established business.

The second factor is also met, as Mr. Greer typically supplied his own tools when he would conduct repairs for Ms. Anderson. Ms. Anderson stated "Rick usually provides everything else, he has one of those big built-in toolboxes on the bed of his pickup truck with all kinds of tools, everything from power drills and big saws to wrenches and screwdrivers." *Client Interview of Nicole Anderson*. Ms. Anderson admitted that she would occasionally supply Mr. Greer with certain instrumentalities to complete the job, such as specific colors of paint or fixtures, but it is clear that Mr. Greer provided his own tools in order to apply the paint, adhere the fixtures to the walls, and complete the jobs.

The third factor is neutral, as Mr. Greer was paid either hourly or by a flat fee, depending on the job. Customarily, an employee is paid by the hour and keeps regular hours. Although Mr. Greer is occasionally paid on an hourly basis at \$25/hour (for plumbing and electrical projects), Mr. Greer is typically paid a flat rate depending on the job. For example, Ms. Anderson stated that she generally pays Mr. Greer a flat fee of \$200 per room when he paints standard interior rooms in her units. It is obvious that Mr. Greer is not typically paid by the hour for his work, and therefore one should determine that his standard rate of pay is by the job.

Fourth, the work Mr. Greer does is not part of the regular business of the principal. Ms. Anderson is in the business of managing rental properties. Although a part of that business includes the routine repairs and maintenance, it certainly is not the only or largest part of the business Ms. Anderson conducts. Just as in *Robbins v. Workers' Compensation Board*, Mr. Greer's contributions to Ms. Anderson's business "constitute only occasional, discrete maintenance." (Fr. Ct. of Appeals 2007).

The fifth factor asks whether the worker has a substantial investment in the worker's business other than personal services. Mr. Greer has a substantial investment in his own independently-established business, Greer's Fix-Its. This fact satisfies the fifth factor.

The sixth factor asks whether Mr. Greer hired employees to assist him. In this situation, Mr. Greer was not being assisted by anyone at the time of his injury. Further, there is nothing in the facts suggesting that he hires additional employees to assist him with any of his work in Ms. Anderson's business.

The seventh factor asks whether the parties believed they were creating an employer-employee business. This factor is harder to determine, as there is evidence showing that Mr. Greer may have believed Ms. Anderson was his employer as well as evidence that Ms. Anderson did not believe that she was the employer of Mr. Greer. Mr. Greer presented some evidence showing that he believed Ms. Anderson was his employer when he filed a Workers' Compensation Claim against her (see *Workers' Compensation Claim*). In this claim form, Mr. Greer refers to Ms. Anderson as his employer in Question #4. Additionally, the presentation of this form to Ms. Anderson for her to fill out the "Employer" information shows that he may have believed that Ms. Anderson was his employer. Conversely, Ms. Anderson has presented evidence showing that she did not intend for an employee-employer relationship to begin. First, Ms. Anderson stated in her client interview that she was "shocked" when she received the Workers' Compensation Claim Form from Mr. Greer, "because it never occurred to her that Rick might consider himself to be an employee of hers." *Client Interview of Nicole Anderson*. Second, Ms. Anderson stated several times that she did not "employ" Mr. Greer on an ongoing basis but that she "was not sure how often she would need his help." *Email Correspondence between Anderson and Greer*. All in all, there is evidence on each side showing that there may have been an employer-employee relationship, but that there also may not have been an employer-employee relationship.

Finally, the eighth factor asks the degree of permanence in the working relationship. Here, Mr. Greer had been working for Ms. Anderson since July of 2013, just shy of three years. However, one could presume that Mr. Greer was still engaged in the upkeep of his own business, Greer's Fix-Its, as well as engaged in maintenance projects for other building owners, such as Jim. *Client Interview with Nicole Anderson*. Three years is not determinative of a permanent relationship between Mr. Greer and Ms. Anderson. Further, Ms. Anderson contended that she was "not sure how often she would need his help." *Email Correspondence between Anderson and Greer*.

All in all, the majority of the factors of the *Doyle* test show that Mr. Greer was an independent contractor and not the employee of Ms. Anderson. Therefore, Ms. Anderson should not be held personally liable for the injury Mr. Greer sustained in February 2016 when he fell off a ladder.

Further, section §253 of *Franklin's Workers' Compensation Act* provides that an independent contractor refers to "any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished." Here, Ms. Anderson was clearly only interested in the specified result and not in the means by which the result would be accomplished. This is only further evidence to support that Ms. Anderson was merely paying Mr. Greer as an independent contractor and was not the employer of Mr. Greer.

Public Policy Concerns

Also needing consideration are the public policy concerns identified in §280 of the *Franklin Workers' Compensation Act*. In this section, it is stated that the provisions in the statute "shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment." This same policy concern is considered in *Robbins v. Worker's Compensation Appeal Board*. In *Robbins*, the court found that the benefits expressed in §280 of *Franklin's Workers' Compensation Act* should be applied to "those situations where the worker has control over how the work was done and, in particular, had primary power over work safety and could distribute the risk and cost of injury as an expense of his own business."

Here, if Mr. Greer was not employed under Ms. Anderson, the court would find that Mr. Greer was entirely responsible for the risk of personal injuries. Further, while *Doyle* refers to the unskilled harvest workers and their inability to reject the job or negotiate the pay, Mr. Greer is in a substantially different situation here. Mr. Greer was able to negotiate payment for the jobs he completed for Ms. Anderson and he was not in a weak bargaining position.

Therefore, §280 should not be liberally construed under Ms. Anderson and her use of Mr. Greer as an independent contractor.

Franklin Worker's Compensation Act (Act) requires that employers maintain insurance coverage for employees who may sustain injuries arising out of and in the course of employment. We want to determine, for our client Nicole Anderson, whether Rick Greer was in fact her employee, such that she would be required to cover his injuries sustained. However, if Greer is determined to be an independent contractor, his injuries will not be covered by the Franklin's Worker's Compensation Act and thus Anderson will not be liable for Greer's injuries.

I. Rick Greer, due to the Right of Control Test, and Doyle Factors Will Most Likely Not Be Considered An Employee of Nicole Anderson

Under Franklin's law, an employee is defined every person in service of an employer under any appointment or contract of hire, whether express or implied, oral or written. Sect 251. By contrast, an independent contractor is any person who renders service for specified recompense for a specified result, under the control of the principal as to the result of his work only and not as to the means by which the result is accomplished. As stated above, an injured person found to be an independent contractor is otherwise excluded from the protection of the Franklin Worker's Compensation Act. Sect 705.

The principal test in determining whether there is an employer-employee relationship present is whether the person on whom service is rendered has right to control manner and means of accomplishing the result desired. However this test is not exclusive-- we must also evaluate the Doyle factors in determining whether there was an employer-employee relationship. Generally, Franklin has liberally construed Act to extend benefits to person injured during employment.

A. Right of Control

As stated in *Robbins v Worker's Compensation Board*, the principal test in determining whether there is an employer-employee relationship is whether the person whom service is rendered has the "right to control" the manner and means of accomplishing the result desired. We look to whether all meaning aspects of the relationship are controlled (Doyle). In *Robbins*, the court held that Parker did not have the right of control over Robbins work and that Robbins was an independent contractor. Robbins was hired to trim the bushes outside of a diner and Parker (the owner of the diner) did not have the power to control the manner or means accompanying Robbins' trimming of the bushes. Robbins did not have a set schedule with the diner and in fact showed up only twice as needed.

Likewise, Greer shows up to the residential rental properties when he is needed but generally completes the job within his own discretion. Anderson has controlled paint colors, fixtures used, and how she wants something to appear when its finished. Anderson usually gets involved in the process only to make sure the project turns out the way she wants. She does not micromanage how Greer completes his work. As stated in *Harris*, a person who engages an independent contractor to perform a job for him may retain broad general power of supervision and control as to the results of the work so as to ensure satisfactory performance of the contract.

In contrast, *Harris* court held that the caddie was an employee in that the club generally did control his actions while working there. The club decided what the caddie wore, they gave him a locker, and required him to get permission to enter certain areas of the Club. They also gave him certain duties such as greeting the members. The caddie was controlled throughout his job performance at the golf course and all meaningful aspects of the caddie's work were controlled through the club. Thus the court held that his injuries were covered by worker's compensation.

B. Doyle Factors

There are 8 Doyle factors to be included in the consideration of whether there was an employee, employer relationship. These factors are to be intertwined with the right of control test and their weight depends on the combination of them. The factors are: (1) whether the worker engaged in a distinct occupation or an independently established business (2) whether the worker or the principal supplies the tools or instrumentalities used in the work (3) the method of payment, whether by time or by job (4) whether the work is part of the regular business of the principal (5) whether the worker has a substantial investment in the worker's business other than personal services (6) whether the worker hires employees to assist him (7) whether the parties believe they have created an employer-employee relationship and (8) the degree of permanence of the working relationship.

As to the first factor Greer was discovered by Anderson when she found his ad in the yellow pages "Greer's Fix It". We are unsure of how long Greer had been fixing things but clearly he has established this business outside of his work with Anderson. In fact Anderson contacted Greer's other references in order to ensure he would do a proper job on her rentals. Similarly Robbins had been performing his gardening services on his own for 25 years and had other clients outside of the person he was suing. In contrast, the caddie did not have an established business outside of the club.

As to the second factor, generally Anderson does not supply the tools for Greer. Anderson sometimes supplies him with the paint color for particular paint jobs but Anderson states generally Greer uses the tools in the back of his truck for jobs and that on the day of the accident, Greer was using his own ladder. Anderson does reimburse him for any materials that Greer may need to purchase for the project. Similarly in *Robbins*, Robbins supplied all of his own equipment for the jobs as this was not property the diner would have had. The club, in contrast, did provide the uniform and a locker to its caddies.

As to the third factor, Anderson sometimes pays him per hour or per job. However Anderson has agreed to pay Greer \$250 a month even if he does not do 10 hours of work in that month so that Greer is available to her. This is not a strong argument that Greer is an independent contractor. Robbins was not hired on a regular basis either, however in contrast Robbins only worked at the diner twice. In *Harris*, the club did retain a schedule of working from 7am to 3pm, daily at the club. And although the caddie was free to work elsewhere, the club retained more control over the caddie's schedule than Anderson did of Greer's.

As to the fourth factor, Greer's work as a repairman is part of the regular business of renting out homes. Anderson has stated that she was unable to keep up with the maintenance of the homes she was constantly renting, so she hired Greer to maintain them. In contrast, Robbins gardening services were wholly unrelated to the restaurant business. Likewise, the caddie's job was a regular part of the club's business.

As to the fifth factor, we note that Greer does have a substantial investment in the worker's business because he does many repair jobs outside of Anderson's and in fact owns a company called "Greer's fix -it". In contrast, the caddie did not maintain a business as a caddie outside of the club.

As to the 6th factor, Greer does not hire other employees to assist him in his work. Neither did Robbins hire any additional employees to assist him in his work.

As to the 7th factor, it did not occur to Anderson that her relationship with Greer was an employee relationship and did not take taxes out of his pay. Greer did not state or testify that he believed he was in a employer-employee relationship with Anderson either, until he filed the worker's compensation claim. Likewise neither Robbin, nor the diner owner testified that they believed there was an employee relationship.

As to the 8th factor, there was minimal permanence in this relationship in that Anderson would contact Greer when he was needed for jobs. Greer was able to turn down or accept jobs as set forth by Anderson. Similarly, Robbins only worked with the diner twice to perform those two jobs. Thus Greer's permanence was slightly moreso than Robbins however his work was still generally compensated by job or by the hour.

Given the factors in combination, it can be stated that Greer was more of an independent contractor to Anderson. Greer supplied his own materials, paid his own taxes, did not hire any of his own employees, and established his own Fix-it career prior to his work with Anderson. The less strong factors are the fact that Anderson paid Greer \$250 a month to ensure his availability and that Greer's services were crucial to her business of renting out homes. However as stated above, Greer's services were provided outside.

C. Public Policy Factors

The court also generally looks to public policy factors such as the remedial purpose of the worker's compensation laws, the class of persons intended to be protected, and the relative bargaining power of the parties. Where the worker had control of how the work was done and had primary power over work safety and could distribute the risk and cost of the injury as an expense of his own business, worker's compensation will not cover those injuries. Franklin's worker's compensation is not provided for the injuries of people who could control the risk within their own business. Concerning the bargaining power of the parties, as stated above, Greer had the freedom to accept or reject jobs and therefore had strong bargaining power in his relationship with Anderson. Thus the public policy factors also sway strongly in favor of not covering Greer's injuries, as he was an independent contractor.

In conclusion, considering the Right to control test, the Doyle factors, and the public policy factors, Greer will most likely be considered an independent contractor and therefore his injuries will not be covered by Franklin's worker's compensation act.

Greer is most likely to be considered an independent contractor of Anderson under the Franklin Workers' Compensation Act.

Under the right-of-control test set forth in *Doyle v. Workers' Compensation Appeals Board* (Fr. Sup. Ct. 1999), it will most likely be considered that Ms. Anderson does not have the right to control Greer's work. The principal test of an employment relationship is whether the person to whom service is rendered has the "right to control" the manner and means of accomplishing the result desired. *Robbins v. Workers' Compensation Appeals Board* (Fr. App. Ct. 2007). The person employing services may "retain broad general power of supervision and control as to the result of the work so as to ensure satisfactory performance of the contract...without changing the nature of the independent contractor relationship or the duties arising from that relationship" *Harris v. Workers' Compensation Appeals Board* (Fr. App. Ct. 2003). Ms. Anderson hired Greer to find someone who could perform maintenance and repair work on all of her rental properties. When projects come up, Ms. Anderson contacts Greer, who checks his schedule and works her into his schedule to get the project done. Generally, she tells him what needs fixing, such as the toilet is leaking, or the gutters need to be cleaned. For certain tasks, he is provided with specific instructions. For example, he is also to inspect the exterior of each of the properties monthly, using a checklist provided by Ms. Anderson. Once he starts work, she does provide specific instructions sometimes, such as what color paint to use or what fixtures need to be installed. However, in *Harris*, the Appellate Court found that actions such as inspecting, stopping work, making suggestions or recommendations as to the details of the work, or prescribing alterations or deviations in the work to ensure satisfactory performance of the contract does not necessarily change the nature of the independent contractor relationship to an employer-employee relationship. As a handyman who performs general maintenance and repair work, Greer had power to control the manner or means of accomplishing the general maintenance and repair work. For example, when a toilet is broken, he fixes it and Ms. Anderson does not tell him how to fix it. For certain renovation work, Ms. Anderson might provide the paint colors or fixture choices, but Greer paints the walls and installs the fixtures and chooses how to do it.

On the day of his accident, Greer was painting the exterior of one of Ms. Anderson's rental properties. She had provided specific instructions on how she wanted the job done - that she wanted a narrow brush to paint the trim instead of rollers, and three coats of paint should be applied. While these are specific instructions, generally Greer has how to do his job. Even for this project, he chose when to arrive and chose the specific tools. Even for Ms. Anderson's request to use a narrow brush, Greer can choose which narrow brush he will use - whether flat tipped, or pointy, or any other kind.

It is most likely that Ms. Anderson does not have the right to control Greer's work.

After balancing the eight *Doyle* factors, a court will most likely find that Greer is an independent contractor, although there are enough factors supporting either conclusions (whether Greer is an independent contractor or employee).

1. Whether the worker engaged in a distinct occupation or an independently established business

Greer seems to have a well-established business, called "Greer's Fix-Its," publishes ad in the Yellow Pages, and a solid group of customers who are willing to provide references for him. Further, he seems to have a lot of other work and projects outside of what he does for Ms. Anderson, to the point that she felt the need to pay him a minimum of \$250 to ensure his availability for 10 hours per week. (However, this factor can almost be considered a negative factor as described below. *Infra* point 3 and 8.

2. Whether the worker or principal supplies tools/instrumentalities in the work, other than those customarily supplied by employees

Greer supplies all tools requirement for most maintenance and repair work, everything from power drills and big saws to wrenches and screwdrivers, enough varieties of tools to be able to handle a remodel, as he did at Jim's apartment complex last year. While sometimes Ms. Anderson provided paint, ceiling fans, faucets and other fixtures, these items are not considered tools of his trade, but rather, items reflecting decorative choices of Ms. Anderson, which she supplied to ensure that correct items are installed. Greer could have purchased the materials for the job and seek reimbursement from Ms. Anderson, but the consequence of dealing with wrong purchases are not worth the potential headache they could cause (such as having to repaint a whole room, or have to uninstall incorrect fixtures and reinstall with the correct ones).

3. Method of payment

Greer was paid on a per-job basis, getting paid \$25 per hour, or a lump sum amount per project, with the amount for each project negotiated on a per-project basis. Taxes are not deducted from his payment and Greer pays his own taxes/ However, Greer was also receiving \$250 flat fee payment to be available for 10 hours each month, regardless of whether he had 10 hours of work to complete or not. The existence of such a payment, and the fact that it establishes obligation to work in the future (on a monthly basis, and indefinitely) weighs this factor slightly in favor of Greer.

4. Whether work part of the regular business of the principal

The core purpose of Ms. Anderson's business is to rent out properties, providing places to live to tenants and collecting payment for providing a suitable place to live. Greer's work is related to the rental business in that providing clean and suitable living environment is an important part of the business. Not only does his work an important part of providing a presentable living space, he also conducts ongoing maintenance and repair work, which helps Ms. Anderson comply with her on-going duty as a landlord to maintain the living space habitable and safe. However, unlike in *Doyle*, where the harvesting work was an integral part of the grower's business, without which the grower would be completely unable to achieve his business purpose, here, Ms. Anderson could still achieve her business purpose without Greer's work, albeit not as satisfactorily. This factor is most likely neutral.

5. Whether the worker has a substantial investment in the worker's business other than personal services

Greer seems to have a substantial investment in his business, such as publishing advertisements online and acquiring most of the tools and equipment necessary for not only routine maintenance work, but also for more intensive remodel work.

6. Whether the worker hires employees to assist him

It does not seem that Greer hires any other employees to assist him, this factor alone does not sway the conclusion of whether Greer is an independent contractor or an employee.

7. Whether the parties believe they are creating an employer-employee relationship

Ms. Anderson mentioned that she never considered Greer to be her employee, as she did not withhold taxes or obtained insurance coverage, and Greer indicated in the worker's compensation claim form that he considered Ms. Anderson to be his employer. The last communication from Greer was in June of 2013 when the relationship had just begun, in which there were strong indications that the relationship was independent contract, as he refers to Ms. Anderson as his "customer." However, he could argue that circumstances have changed since then. This factor is neutral.

8. Degree of permanence of the working relationship

Greer is expected to be available at least 10 hours per month, and this arrangement seems indefinite. Depending on the amount of projects going on, Greer could be needed far more than 10 hours a week or far less. The fact that Ms. Anderson supplied him a continuous stream of work and payment weighs against her, but the fact that Greer has other customers seemingly providing him with similar type of work, such as Jim, does mitigate this factor a little bit. However, given the overall degree of permanence, this factor definitely weighs against Ms. Anderson.

Considering the totality of quality of the factors, and not considering just the quantity of which factors weighs against which decision, it is most likely that Greer is an independent contractor, because he rendered services for a specified recompense for a specified result, under the control of his principal as to the result of his work only.

Finally, considering public policy underlying Franklin's workers' compensation law, which indicates the exclusion of independent contractor from the law's benefits should apply to those situations where the worker had control over how the work was done, and had primary power over work safety and could distribute the risk and cost of injury as an expense of his own business, Greer should be considered an independent contractor. The nature of Greer's work sometimes comes with danger - such as having to climb a ladder or work with dangerous tools. Greer has primary power over work safety, as he provides his own tools, he can purchase tools that he feels comfortable working with and provides him with the most protection he requires. Furthermore, Greer is free to take or reject any jobs offered by Ms. Anderson. He negotiated payment with her and was not in a weak bargaining position. Even the \$250 per month to be available for 10 hour arrangement was something he could walk away from had he chosen. These facts support the conclusion that Greer does not fall under the protections of the workers' compensation act, but is an independent contractor.

Considering and balancing all relevant factors, and keeping in mind the liberal construction of the Workers' Compensation Act, it is most likely that Greer is an independent contractor.