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In re Anderson

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NATIONAL CONFERENCE OF BAR EXAMINERS

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In re Anderson

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FILE

CALVETTI, LAWRENCE & MASTERSON
Attorneys at Law
84 Richmond Avenue, Suite 1300
Lafayette, Franklin 33526

MEMORANDUM

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

Our client Nicole Anderson seeks legal advice regarding a workers' compensation claim that is being filed against her by Rick Greer, a handyman hired by Anderson to perform general maintenance and repair work for her residential rental properties. Greer was injured while painting the exterior of one of Anderson's rental houses.

Under the Franklin Workers' Compensation Act, codified in the Franklin Labor Code § 200 *et seq.*, employers are required to maintain insurance coverage for employees who may sustain injuries arising out of and in the course of their employment. When employees are injured on the job, they can submit workers' compensation claims and be paid for their lost wages during the period in which their injuries prevent them from returning to work, as well as their medical costs.

Workers' compensation applies only to employees; it does not apply to independent contractors. Anderson did not maintain workers' compensation insurance coverage because she did not believe she was required to insure Greer against injury. If Greer is found to be Anderson's employee, Anderson could face substantial personal liability as well as penalties under the Workers' Compensation Act for failing to provide this coverage.

Please draft a memorandum to me in which you analyze whether Greer would be considered an employee of Anderson under the applicable statutory provisions and case law. Do not include a separate statement of facts, but be sure to incorporate the relevant facts, analyze the applicable legal authorities, and explain how the facts and law affect your analysis and conclusion.

**Transcript of client interview: Nicole Anderson
February 19, 2016**

Attorney Lawrence: Ms. Anderson, it's a pleasure to meet you. I understand that you're seeking our assistance with regard to a workers' compensation claim that is being asserted against you. Why don't you tell me a little more about your business and then we can talk about the claim.

Nicole Anderson: Well, about five years ago, I got involved in the rental property business when I couldn't sell the house that I owned and lived in. I couldn't afford two mortgages, so I ended up renting out my old house. I had such a positive experience as a first-time landlord that I decided to invest in additional rental properties. Over the past five years, my rental property business has steadily grown, and I now own 11 rental properties, all of them single-family houses, here in Lafayette.

Initially, when I had only a couple of rental properties, I personally handled most of the basic maintenance work like painting and replacing trim, basic plumbing problems, and the like. If a particular project was too complicated or time-consuming, I'd recruit family members to help me or hire out the work to various handymen as needed. About three years ago, I reached the point where I had too many rental properties to keep up with as far as basic maintenance and repair work, and I was tired of dealing with different handymen, some of whom were less reliable than others. So I decided to find someone who could perform all of the maintenance and repair work on my rental properties. That's when I found Rick Greer.

Atty: And is Mr. Greer the person who was injured and who is attempting to assert a workers' compensation claim against you?

Client: Yes, I just received this claim form. [Workers' compensation claim form attached.]

Atty: How did you come to find him?

Client: I saw an ad in the online Yellow Pages for "Greer's Fix-Its." After speaking with him and checking his references, I felt confident that he would do a good job at a reasonable price.

Atty: How long has Mr. Greer provided handyman services for you?

Client: Since June of 2013.

Atty: Did the two of you enter into any kind of written agreement?

Client: Not anything formal, but we did discuss the parameters of his work by email. I've brought a copy of the emails in which we discussed what he was going to do, how he was going to be paid, and what the general arrangement would be.

Atty: Great. Let me take a look at it The email says Mr. Greer was going to perform general maintenance and repair work. What specific kinds of services has he provided?

Client: He does a lot of stuff—everything from cleaning and repairing rental houses between occupancies to minor renovations and upgrades, in addition to basic maintenance and general upkeep such as painting, cleaning gutters, simple plumbing and electrical work, hauling debris to the dump, and other odds and ends. I also require him to inspect the exterior of each of the properties monthly, using a checklist that I've provided to him.

Atty: And how is he paid?

Client: We negotiate the payment amount for each project. I always pay him by check when the work is done. Sometimes I pay him on an hourly basis at a rate of \$25 per hour, and other times I pay him a flat rate by the project. For instance, I pay him a flat fee of \$200 per room to paint standard interior rooms. If a room is large or the ceiling or trim needs to be painted in addition to the walls, then we negotiate a higher fee. For plumbing and electrical projects, I pay him by the hour. I also reimburse him for any materials that he may need to purchase in connection with each project, such as paint, wiring, and lumber. I've agreed to pay him a minimum of \$250 per month, even if he doesn't do 10 hours of work in that month, to be sure that he is always available to me.

Atty: Do you withhold any taxes from the money you pay him?

Client: No, I always thought he was responsible for paying his own taxes.

Atty: How often does he perform handyman services for your rental properties, and how many hours a week or a month would you say that it works out to?

Client: Typically, he handles around five projects a month, sometimes more, sometimes less. Each project is different, and some take more time than others, but I'd estimate that on average he spends about 10 hours a month working on projects at my rental properties. When a tenant moves out, which happens about once every 18 months or so, he can spend as little as 5 hours or as much as 15 to 20 hours getting the place ready to re-rent, depending on how well the tenant took care of the house. With 11 rental properties,

there's a pretty steady flow of necessary maintenance and repair work. When something comes up, I call him and then he works me into his schedule and gets the project done.

Atty: What was Mr. Greer doing on the day he was injured?

Client: He was painting the front exterior of my rental house on Clover Circle.

Atty: What happened that day?

Client: Well, on February 11, I was at the rental house on Clover, telling him what I wanted him to do. I told him to be sure to mask the windows, that I didn't want rollers but a narrow brush to paint the trim, and to apply three coats of paint.

Atty: Do you always give him detailed directions like that?

Client: Not always, but I'm pretty particular. I want my properties to look nice, so I want the job done right. This was an expensive rental, and I wanted it to look really nice.

Atty: Okay, what happened next?

Client: I walked around the corner of the house, and a few minutes later I heard Rick yell. I ran back and found that he had fallen off a ladder and was hurt. He had broken his right arm and was in a lot of pain. I got him into my car and drove him to the hospital. The hospital took him into the emergency room right away.

Atty: What happened next?

Client: I called his wife from the hospital, and when I knew she was coming, I went home. Later on I tried to reach Rick and his wife by phone. They never answered and didn't return the messages I left. The next day, I called Jim, a friend of mine who owns an eight-unit apartment complex and uses Rick on repair and maintenance projects for that complex. Jim told me that he had spoken with Rick, who had said that his arm would be in a cast for at least four weeks and that he probably wouldn't be able to work for another two to four weeks after the cast came off, while he underwent physical therapy.

Atty: Who owns the ladder?

Client: As far as I know, Rick does.

Atty: Do you ever provide him with any tools for the work he performs for your rental houses?

Client: Sometimes on paint jobs, when there's a particular color that I want Rick to use, I've bought the paint from the hardware store to make sure that it's the right color, instead of having Rick buy it and then reimbursing him. I've also picked out ceiling fans, faucets, and other fixtures for rental properties on occasion, but that's about it. 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. I think he keeps a lot of tools on hand for bigger projects that come up, like the remodel that he completed at Jim's apartment complex last year.

Atty: You mentioned that you sometimes select the paint color and fixtures such as ceiling fans and faucets on some of Mr. Greer's projects. Do you also get involved in other aspects of his work?

Client: It really depends. When it comes to paint color, the installation of a ceiling fan, or the way I want something to look when it's finished, I usually get involved in the process to make sure the project turns out the way I want it to, but I don't micromanage him or anything like that. He's very good at what he does and he knows what he's doing. If I tell him that a toilet is leaking, he figures out what the problem is and then fixes it. I work full-time as an accountant, and my job keeps me very busy, so most of the time I just swing by the property after Rick's done to make sure the work got done right before paying him for the work.

Atty: When did you find out that he was going to file a workers' comp claim against you?

Client: Not until yesterday, when he faxed over a workers' compensation claim form and asked me to fill out the "Employer" section. I was really shocked when I received the form because it never occurred to me that Rick might consider himself to be an employee of mine. I haven't withheld taxes or obtained any insurance coverage for Rick, and I don't even want to think about what it would cost to pay his medical bills or lost wages.

Atty: I understand your concerns. I think I have a pretty good idea of the professional arrangement between you and Mr. Greer. I'm going to need to research the legal issues surrounding his workers' compensation claim. I will give you a call next week to let you know what I think the next steps are.

Client: Okay. I look forward to hearing from you. And thanks so much for your help with this.

Email Correspondence Between Anderson and Greer

From: Nicole Anderson<nicorentals@cmail.com>

Date: 17 June 2013, 9:00 a.m.

To: Rick Greer <Rick@Greersfixits.com>

Subject: Handyman Work

Hi, Rick. Great talking with you earlier this week! I called your references, and they had nothing but good things to say about you. So I'd like to go ahead and have you help me with general repair and maintenance projects at my rental properties. I think I already told you this, but all are single-family houses with the usual ongoing maintenance and repair needs. I'm not sure how often I'll need your help, but I look forward to working with you.

Nicole

From: Rick Greer <Rick@Greersfixits.com>

Date: 17 June 2013, 11:15 a.m.

To: Nicole Anderson<nicorentals@cmail.com>

Subject: Handyman Work

Sounds good. Just let me know when you need my services, and I will make sure to get out to the property and get the problem handled. As I told you, I charge all my customers \$25/hour for electrical and plumbing work and routine maintenance and repairs. We can discuss the price of other projects as they come up.

Rick

From: Nicole Anderson<nicorentals@cmail.com>

Date: 18 June 2013 8:15 a.m.

To: Rick Greer <Rick@Greersfixits.com>

Subject: Handyman Work

Okay. If you need to do any work on the inside of a rental house, I'll need to coordinate with my tenant to make sure that someone is there to let you in and that it's a convenient time for the tenant and for you. Exterior projects like gutter work can be done basically at your convenience. If the tenant has a dog, I just need to give the tenant a heads-up so that we can make sure the dog is secured before you show up. Will call you as soon as I need your help. Thanks!

Nicole

STATE OF FRANKLIN
DEPARTMENT OF LABOR RELATIONS
DIVISION OF WORKERS' COMPENSATION

WORKERS' COMPENSATION CLAIM FORM (DWC 1)

Employee: Complete the "Employee" section and give the form to your employer. Keep a copy and mark it "Employee's Temporary Receipt" until you receive the signed and dated copy from your employer.

Employee—complete this section and see note above.

1. Name Rick Greer Today's date February 18, 2016
2. Home address 13269 Cabot Road, Lafayette, Franklin 33527
3. Date of injury February 11, 2016 Time of injury 9:00 a.m. _____ p.m.
4. Address and description of where injury happened I fell from a ladder at 3025 Clover Circle, Lafayette, Franklin 33529, while painting a house for my employer, Nicole Anderson.
5. Describe injury and part of body affected broken right arm

6. Signature of employee *Rick Greer*

Employer—complete this section and see note below.

7. Name and address of employer _____
8. Date employer first knew of injury _____
9. Date claim form was provided to employee _____
10. Date employer received claim form _____
11. Name and address of insurance carrier _____
12. Insurance policy number _____
13. Signature of employer representative _____
14. Title _____ 15. Telephone _____

Employer: You are required to date this form and provide copies to your insurer or claims administrator and to the employee, dependent, or representative who filed the claim within **five working days** of receipt of the form from the employee.

SIGNING THIS FORM IS NOT AN ADMISSION OF LIABILITY.

- Employer copy Employee copy Claims administrator Temporary receipt

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**Excerpts from the Franklin Workers' Compensation Act
Franklin Labor Code § 200 *et seq.***

Article 2. Employers and Employees

§ 251. "Employee" means every person in the service of an employer under any appointment or contract of hire, whether express or implied, oral or written

§ 253. "Independent contractor" means 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.

§ 257. Any person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is presumed to be an employee.

§ 280. The provisions of this 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.

Article 7. Workers' Compensation Proceedings

§ 705. The following are affirmative defenses, and the burden of proof rests upon the employer to establish them: (a) That an injured person claiming to be an employee was an independent contractor or otherwise excluded from the protection of this division where there is proof that the injured person was at the time of his injury actually performing service for the alleged employer.

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Robbins v. Workers' Compensation Appeals Board

Franklin Court of Appeal (2007)

This is an appeal from a decision of the Franklin District Court affirming an order of the Workers' Compensation Appeals Board. The Board held that appellant Matthew Robbins was an "independent contractor" and not an "employee" for purposes of the Franklin Workers' Compensation Act (Franklin Labor Code § 200 *et seq.*) and thus was not eligible for workers' compensation benefits. We affirm.

Background

Robbins injured his head and lower back when he fell from a roof while trimming bushes at the Maple Leaf Diner in the Town of Jefferson. Robbins filed a workers' compensation claim against the diner's owner, Alana Parker.

Parker called no witnesses at the workers' compensation hearing. Robbins testified that he has been gardening, painting, fixing pipes, and doing graffiti removal for 25 years. His clients are people who either know him or are referred to him by word of mouth. He charges by the hour, but sometimes he contracts for an entire job. He usually does the same type of work but for different people each day. Robbins does not have a roofer's license or a general contractor's license. He has no office and no employees, and he does not advertise.

Parker arranged for Robbins to trim the bushes along the roofline of the diner on two occasions. The first time was in August 2004, and the second, July 15, 2005, was the day he fell.

In 2004, Parker paid Robbins by the hour, although they did not discuss the number of hours he would work. Nor did they discuss the hourly rate until he was finished. On the 2004 visit, Parker paid Robbins \$150. She did not deduct taxes from his pay. He pays his own taxes. Parker and Robbins did not discuss at that time when he would provide services in the future, agreeing only that Parker would contact him when his services were needed. On the second visit, in July 2005, Parker and Robbins did not discuss either the number of hours to be worked or the rate. As it turned out, Robbins was not paid for that visit because, after his fall, he did not complete the work and never sent a bill. Robbins had no plans to do additional work at the diner in the future, other than to trim bushes whenever Parker asked.

On the day he fell, Robbins brought all the equipment he needed to do the job, including a trimmer, a rake, a broom, a leaf blower, and a ladder. He arrived in his own truck. Parker did

not tell him to bring an assistant that day, how to do the job, or how long it would take. She did not tell him to arrive at any given time, only that he should arrive before the diner opened.

Discussion

The question before us is whether Robbins was an employee or an independent contractor when he was injured. The Board's decision that Robbins was an independent contractor (and therefore not entitled to workers' compensation benefits) will be upheld if it is supported by substantial evidence in the record.

Workers' compensation laws protect individuals who are injured on the job by awarding prompt compensation, regardless of fault, for work injuries. *Raleigh v. Juneau Enterprises, Inc.* (Fr. Ct. App. 1992). 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. Franklin Labor Code § 253. The existence of such right of control, not the extent of its exercise, gives rise to the employer-employee relationship. However, this test is not exclusive. Several secondary factors, the "Doyle factors," *infra*, also are relevant to one's status as an employee or an independent contractor.

Franklin courts have liberally construed the Workers' Compensation Act to extend benefits to persons injured in their employment. *Id.* § 280. Because workers' compensation statutes are remedial, public policy considerations also influence the determination of whether an individual is entitled to workers' compensation protections.

Right-of-Control Test

We begin with the right-of-control test set forth in *Doyle v. Workers' Compensation Appeals Board* (Fr. Sup. Ct. 1991). *Doyle* involved unskilled harvesters who worked for the defendant grower. *Doyle* held that, because all meaningful aspects of the relationship (e.g., price, crop cultivation, fertilization and insect prevention, payment, and the right to deal with buyers) were controlled by the defendant grower, the grower exercised "pervasive control over the operation as a whole," and the unskilled harvesters were its employees. The harvesters' only decisions were which plants were ready to pick and which needed weeding. The harvesters' work was an integral component of the grower's operations, over which the grower exercised pervasive control, and the purported "independence" of the harvesters from the grower's

supervision was not a result of superior skills but was rather a function of the unskilled nature of the labor, which required little supervision.

Here, Robbins was engaged to produce *the result* of trimming the bushes. Neither party presented evidence that Parker had the power to control the manner or means of accomplishing the trimming. Indeed, it is Parker's inability to control the means and manner by which Robbins provided the trimming service that puts the facts here in stark contrast to those in *Doyle*. Robbins testified that in general, no one tells him how to do his work on the jobs he accepts and that Parker did not tell him how to do the trimming at the diner. Once he accepted a job, he testified, he completed it without direction from the person for whom he was rendering the service. Thus, the lack of supervision here was not a function of the unskilled nature of the job, as in *Doyle*. Nor does the fact that Parker asked Robbins to arrive early suggest that Parker controlled any aspect of the trimming. It was Robbins who chose both the date and time to perform the service. In short, under the principal test of the employment relationship, Parker did not have the right to control Robbins's work.

Doyle Factors

In addition to the right-of-control test set forth in *Doyle*, we also must analyze the secondary factors identified in that case to determine whether Robbins was an independent contractor or an employee. These "*Doyle* factors" are derived largely from the Restatement (Second) of Agency and from other jurisdictions.

They are (1) whether the worker is 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, 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 are not to be applied mechanically as separate tests but are intertwined, and their weight often depends on particular combinations of the factors. The process of distinguishing employees from independent contractors is fact-specific and qualitative rather than quantitative.

In applying the *Doyle* factors to the facts at hand, we note that, first, Robbins performed his work for Parker as part of his gardening services, which he has been doing independently for approximately 25 years. Although Robbins does not advertise, he has several different clients who telephone or email him to perform specific jobs. Not only does he have many other clients, but Parker did not ask him to perform any service other than trimming the bushes.

Second, Robbins supplied the equipment he used for the job; and they were not tools a restaurant would commonly have.

Third, he was not hired by the day or hour, or even on a regular basis. Payment was only discussed after the work was complete. Sometimes Robbins charged by the hour and sometimes by the job, and he was paid on a job-by-job basis, with no obligation on the part of either party for work in the future. Taxes were not deducted from his payment. Robbins estimates and pays his own taxes.

Fourth, in concluding that the harvesters in *Doyle* were employees, the court found that their work constituted “a regular and integrated portion of [the grower’s] business operation, in that [its] entire business was the production and sale of agricultural crops.” Although seasonal, the work in *Doyle* was a permanent part of the agricultural process, and many harvesters returned to work for *Doyle* each year—all of which led the court to conclude that the “permanent integration of the workers into the heart of *Doyle*’s business is a strong indicator that *Doyle* functions as an employer.” By contrast, Robbins is a gardener whose work is wholly unrelated to the restaurant business; it constitutes only occasional, discrete maintenance. Robbins, for example, was asked to work when the diner was closed so that his work would not interfere with the diner’s *regular business*.

We note that Robbins has 25 years’ experience in his gardening business and a substantial investment in equipment and other aspects of the business, satisfying the fifth factor.

Although Robbins did not hire employees to assist him (the sixth *Doyle* factor), this alone does not negate the overwhelming evidence satisfying the other *Doyle* factors.

Neither Robbins nor anyone else testified that the parties believed they were creating an employer-employee relationship (the seventh *Doyle* factor). This factor is neutral.

With regard to the eighth and final *Doyle* factor, the degree of permanence in the working relationship, no date for Robbins’s return was specified after the first time he trimmed bushes at the diner. Robbins understood that he would be contacted only when his services were needed,

with the result that he worked for a circumscribed period of time with no permanence whatsoever in his working relationship with Parker. Indeed, Robbins had done trimming work for Parker only twice in the space of nearly a year, and there were no plans for him to return to the diner. Thus, Robbins's profit or loss depended on his scheduling, the time taken to perform the services, and his investment in tools and equipment.

Altogether, six of the *Doyle* factors support the Board's conclusion that Robbins was an independent contractor because he "render[ed] 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 [was] accomplished." Franklin Labor Code § 253.

Policy Consideration

Finally, in deciding whether a worker is an employee or an independent contractor, the court must consider the remedial purpose of workers' compensation laws, the class of persons intended to be protected, and the relative bargaining positions of the parties. The policy underlying Franklin's workers' compensation law indicates that the exclusion of independent contractors from the law's benefits should apply to those situations where the worker had 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.

Thus the *Doyle* court, in its analysis of the harvesters' employment status, considered that if the grower were not the employer, the harvesters themselves and the public at large would have to assume the entire financial burden when injuries occur. Accordingly, the harvesters were in the class of workers for which the protections of workers' compensation law were intended.

Robbins, by contrast, was in a distinctly different position from the harvesters in *Doyle*—he was free to take or reject the jobs that Parker offered. He negotiated payment with Parker and was not in a weak bargaining position. These facts support the conclusion that Robbins does not fall under the protections of the workers' compensation act but is an independent contractor.

Conclusion

Here, no amount of liberal construction can change the balance of evidence. Robbins was an independent contractor. This conclusion does not defeat the policy behind the workers' compensation system. The decision of the Board is affirmed.

Harris v. Workers' Compensation Appeals Board

Franklin Court of Appeal (2003)

This is an appeal from the Workers' Compensation Appeals Board. The Board held, and the trial court affirmed, that a golf caddie was an independent contractor rather than an employee and was not entitled to workers' compensation for injuries sustained on the job. We reverse.

Appellant Jordan Harris claimed that he sustained various orthopedic injuries in October 2001, while employed by Lamar Country Club as a golf caddie. The Club argued that Harris was an independent contractor. At the hearing before the Board, Harris testified that he had had continuous employment with the Club since May 2000, working from 7:00 a.m. to 3:00 p.m. daily. He said he was required to wear special clothing: he was issued a cap and had to buy a Club shirt. The Club maintains a caddie assignment and locker room, and has adopted rules of conduct for caddies—including one requiring them to get permission to go to other areas of the Club. According to Harris, his duties were greeting Club members, giving advice about the course, retrieving balls, carrying and cleaning golf clubs, getting carts, and changing shoe spikes. Harris received his assignments from the Club, but members would instruct him while he accompanied them on the course, which is where he was injured. There were no written contracts or tax forms, and Harris had no other caddie business.

Kim Day, the Club's office manager, testified that Harris was not on the Club's payroll, and was paid in cash through various members' accounts. She added that the Club provides caddies for its members, but that there is no set schedule and they are free to work elsewhere.

Andrew Schaefer, the Club's caddie master, testified that he considers the caddies' abilities and personalities when assigning them to members. Members can request certain caddies, but assignments can be refused and caddies may work elsewhere without repercussion. According to Schaefer, once on the course, the members supervise the caddies, although the caddies sometimes advise and serve as guides on the course. Among other things, caddies search for and clean balls and remove flags on the greens. Schaefer also testified that caddies have no set days or hours: they normally sign in and inform him when they are leaving. It is Schaefer's job to pay the caddies cash and charge the members' accounts.

On appeal, Harris notes that employment is presumed under the law when services are provided, and he argues that the Club failed to meet its burden of proving independent contractor

status under the Franklin Labor Code § 705(a). Harris also contends that when the matter is analyzed under *Doyle v. Workers' Compensation Appeals Board* (Fr. Sup. Ct. 1991), the conclusion is inescapable that he was an employee.

Both sides agree that the Club and the caddie master have absolute authority over the premises, while the members direct the caddies on the golf course. But this does not mean that the Club's control does not extend to caddying. It is undisputed that the Club supervised Harris's dress, his behavior, and the types of services he rendered, and it administered the payment process.

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.

Under Franklin Labor Code § 253, employer/employee status exists when the employer controls the manner and means of the work and not just the results. We believe that is the case here. The Club primarily determines assignments based on caddies' abilities and personalities, and keeps track of attendance if not hours. The ability to reject assignments seems of small import considering the effect on income and the Club's clearly superior bargaining position.

The *Doyle* factors also support the conclusion that Harris was an employee. Since Day testified that the Club provides caddies for its members, it is apparent that caddying is an integral part of the Club's business. Thus, Harris provided services which also benefited the Club, and employment is presumed in such situations. Franklin Labor Code § 257. In addition, Harris did not have his own business, and the fact that the Club allows caddies to work elsewhere does not negate a finding of employment. Although some items of equipment such as golf clubs are supplied by the members, the Club provides a caddie room and lockers.

Considering the totality of circumstances, and § 280 of the Labor Code, which provides that the statute be liberally construed with the purpose of extending benefits to those injured in the course of employment, we conclude that Harris was an employee. The decision of the Workers' Compensation Appeals Board denying workers' compensation benefits is vacated, and the case is remanded for further proceedings consistent with this opinion.

NOTES

NOTES

MULTISTATE PERFORMANCE TEST DIRECTIONS

You will be instructed when to begin and when to stop this test. Do not break the seal on this booklet until you are told to begin. This test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem involving a client.

The problem is set in the fictitious state of Franklin, in the fictitious Fifteenth Circuit of the United States. Columbia and Olympia are also fictitious states in the Fifteenth Circuit. In Franklin, the trial court of general jurisdiction is the District Court, the intermediate appellate court is the Court of Appeal, and the highest court is the Supreme Court.

You will have two kinds of materials with which to work: a File and a Library. The first document in the File is a memorandum containing the instructions for the task you are to complete. The other documents in the File contain factual information about your case and may include some facts that are not relevant.

The Library contains the legal authorities needed to complete the task and may also include some authorities that are not relevant. Any cases may be real, modified, or written solely for the purpose of this examination. If the cases appear familiar to you, do not assume that they are precisely the same as you have read before. Read them thoroughly, as if they all were new to you. You should assume that the cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page references.

Your response must be written in the answer book provided. If you are using a laptop computer to answer the questions, your jurisdiction will provide you with specific instructions. In answering this performance test, you should concentrate on the materials in the File and Library. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.

Although there are no restrictions on how you apportion your time, you should allocate approximately half your time to reading and digesting the materials and to organizing your answer before you begin writing it. You may make notes anywhere in the test materials; blank pages are provided at the end of the booklet. You may not tear pages from the question booklet.

Do not include your actual name anywhere in the work product required by the task memorandum.

This performance test will be graded on your responsiveness to the instructions regarding the task you are to complete, which are given to you in the first memorandum in the File, and on the content, thoroughness, and organization of your response.