



Sherri Bevan Walsh

Prosecuting Attorney
Summit County, Ohio

In an effort to preserve our natural resources, we are converting our mailings to a digital format. If you'd like to join us in going green, please email Lisa Holdt at holdt@prosecutor.summitoh.net to receive this newsletter via email.

NEWS FROM THE CIVIL DIVISION

In an effort to improve this newsletter, I am moving away from the six-page, semi-annual format. Instead, you will receive a brief update every few months to ensure that you receive news that is timely and relevant. I hope this change is beneficial to you. As always, I look forward to your feedback.

Stay safe,
Sherri Bevan Walsh

Employee vs. Independent Contractor

When creating a contract with another party for work to be done, it is important to clarify whether the person doing the work is an employee of your organization or an independent contractor. While this may not seem like a big deal now, imagine the legal headaches of an unclear contract if the person you intended to be an independent contractor gets hurt and tries to file for workers' compensation or wants to claim unemployment at the completion of the work for which they were contracted?

Simply including in your contract a clause designating a person as an independent contractor does not necessarily make it so. In *Walker v. Lahoski* (Ohio App. 9th Distr. 1999), 19293, 1999 WL 548978, the court stated that "[T]he trial court must look to the substance of the relationship, not merely to a label attached to the relationship."

In determining whether the relationship is employer-employee or employer-independent contractor, the overriding question is who controls the work. Determining who controls the work takes into account who decides:

- The hours worked,
- The details and quality of work,
- The materials, tools and personnel used,
- The routes travelled,
- The length of employment,
- The method of payment,
- The type of business, and
- Any pertinent agreements or contracts.

"[I]f the employer is merely interested in the result and does not retain the right to direct the manner in which the work is completed, the relationship is that of employer and independent contractor."

- Ohio Supreme Court in Marshall v. Aaron (1984)

It is important to note that *exercising* control is not the ultimate decider, but rather *who has the right to exercise control*. For example, our Ninth District Court of Appeals found that, despite signing a contract that said a home health care worker was an independent contractor, the worker was an employee of the person needing care because the agreement signed between the two parties granted the customer the right to exercise control over the worker, even though that customer had not completely exercised control.

To prevent uncertainty and potential unintended financial responsibility, your contracts should specify who is to control the details listed above, not just that the worker is an independent contractor not entitled to workers' compensation, unemployment, PERS or other benefits employees are entitled to receive.

January 2012



Follow us on Twitter
[@ProsecutorWalsh](https://twitter.com/ProsecutorWalsh)