

Employment Law:

Assignment 1

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Client's Status as Employee or Independent Contractor

- This is a threshold issue you'd need to address to determine what claims, if any, the client may have against Academy.
 - It could also be relevant to the validity of a noncompete (because some jurisdictions apply a stricter standard for noncompetes involving independent contractors).
- You should explain the legal test ("right of control") and its significance to the client, and ask questions to elicit facts relevant to the control factors.
 - The problem doesn't really give any of the relevant information, so I didn't expect you to offer any analysis, just indicate the questions you'd ask or types of facts you'd want.

Additional Legal Issues

Beyond identifying these as issues to raise with the client, I didn't expect you to give any explanation or analysis, since we haven't covered them yet.

Client's Potential Claims Against Academy

- Workers' Compensation
 - If client was an employee, and if she was injured while on her way to the Sheriff's office as part of her employment (implied but not explicit in the client's description), her injuries would likely be covered by workers' comp. She might have two claims:
 - * Workers' comp benefits to cover the cost of her treatment.
 - * Retaliatory discharge.
- Family & Medical Leave Act (FMLA)
 - Bellows told client she was ineligible for leave because she was a contractor. But if she was an employee, she may have been entitled to FMLA leave.
 - * I wouldn't expect you to say much here beyond noting that the client might have claims for failure to provide leave and for discriminatory termination under FMLA.
- Americans with Disabilities Act (ADA)
 - If client was an employee, you might also want to consider whether the ADA applied. If so, the client might have claims for failure to provide reasonable accommodation and for discriminatory termination under the ADA.
 - * Among other things, you'd need to ascertain whether her injury would be a "disability" under the ADA.

Noncompete Agreement

- The problem suggests that the client may have a noncompete agreement with Academy.
 - You should ascertain whether that's true. If so, you'd want to see a copy so that you can advise the client as to whether it really does preclude her from working for Greenwood.
 - * Does the noncompete, as written, even apply?
 - * If so, is the noncompete enforceable under the applicable (state) law?

Client's Goals

Clients don't usually meet with lawyers just to learn about the law. They have a problem that they hope the lawyer can help resolve. In this case, there are multiple problems for which there might be legal remedies:

- The client was injured and has presumably incurred treatment and other expenses.
- The client lost her old job, possibly for a discriminatory or otherwise illegal reason.
- The client was turned down for a new job because of an apparent noncompete agreement.

Finding out what the client wants, and wants you to do, is ultimately the most important goal in the initial meeting.

- Maybe all the client really wants is the job with Greenwood.
 - If you conclude that the noncompete doesn't apply to that job, or is unenforceable under state law, you might suggest bringing a declaratory judgment action (with Greenwood as a co-plaintiff, assuming they want to hire the client).
 - Or, you might try to negotiate a resolution with Academy (e.g. perhaps get them to waive the noncompete in exchange for the client waiving her workers' comp or other claims).