

27 Am. Jur. 2d Employment Relationship § 1

American Jurisprudence, Second Edition | August 2022 Update

Employment Relationship


Tracy Bateman Farrell, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D. and Karl Oakes, J.D.

I. In General

§ 1. Employment and employment relationship

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Labor and Employment  1, 22

A.L.R. Library

Exchange of labor by farmers as creating employment relationship for liability insurance purposes, 89 A.L.R.3d 834

Trial Strategy

Proving the Existence of an Employment Relationship, 22 Am. Jur. Proof of Facts 3d 353

Generally speaking, "employment" is any service performed for remuneration or under any written or oral contract of hire.¹ To "employ" is to make use of the services of another, while to "be employed" means to perform a function under a contract or orders to do so.² While the same definition or test may be applied in different circumstances to determine whether an employment relation exists,³ the existence of an employer-employee relationship may depend upon the purpose for which the issue is being resolved.⁴

The key to establishing an employer-employee relationship is the right to control.⁵ Specifically, the principal test of an employment relationship is whether the alleged employer has the right to control the manner and means of accomplishing the

result desired,⁶ with control over the means the more important factor to consider; incidental control over the results produced, alone, will not constitute substantial evidence that an employment relationship exists.⁷

Observation:

The existence of an employment relationship is to be determined from the consequences which the law attaches to the parties' arrangements and conduct rather than the label they might place upon it.⁸

Along with the right to control the means and manner of performance, the traditional factors determining whether an employment relationship exists are: (1) the mode of payment;⁹ (2) the furnishing of material or tools; (3) the control of the premises where the work is done;¹⁰ and (4) the right of the employer to discharge.¹¹ There is no general rule that covers all situations¹² and no single factor of the test used to determine if an employment relationship exists is conclusive; rather, the totality of the circumstances must be considered.¹³

Practice Tip:

The determination of whether an employer-employee relationship exists ultimately is a question of fact to be determined by a jury¹⁴ although it has also been held that a determination as to the existence of an employer/employee relationship is a question of law that depends on the unique facts of each case;¹⁵ this relationship becomes a question of law only where the material facts from which it can be inferred are not in dispute and only one reasonable conclusion can be drawn from the facts.¹⁶

As a general rule, the relation of employer and employee is not one of those regarded as confidential.¹⁷

CUMULATIVE SUPPLEMENT

Cases:

Under California law, the right to control the means by which the work is accomplished is clearly the most significant test of the existence of an employer-employee relationship. *Hennighan v. Inspire Insurance Solutions, Inc.*, 38 F. Supp. 3d 1083 (N.D. Cal. 2014).

To determine control in an employment relationship, courts consider the following indicia: whether the employer has the right to direct the daily manner and means of a person's work, whether the worker is required to follow the putative employer's instructions, and whether the worker can refuse work offered without ramification. *Catholic Diocese, Green Bay v. John Doe* 119, 349 P.3d 518, 131 Nev. Adv. Op. No. 29 (Nev. 2015).

[END OF SUPPLEMENT]

© 2022 Thomson Reuters. 33-34B © 2022 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 *Louismet v. Bielema*, 457 N.W.2d 10 (Iowa Ct. App. 1990); *Virginia Employment Com'n v. A.I.M. Corp.*, 225 Va. 338, 302 S.E.2d 534 (1983).
- 2 *Childs v. Kalgin Island Lodge*, 779 P.2d 310 (Alaska 1989).
- 3 *Kilgore Group, Inc. v. South Carolina Employment Sec. Com'n*, 313 S.C. 65, 437 S.E.2d 48 (1993); *Virginia Employment Com'n v. A.I.M. Corp.*, 225 Va. 338, 302 S.E.2d 534 (1983).
- 4 *Grubb & Ellis Co. v. Spengler*, 143 Cal. App. 3d 890, 192 Cal. Rptr. 637 (2d Dist. 1983); *Walls v. North Mississippi Medical Center & U.S. Fidelity & Guar. Co.*, 568 So. 2d 712 (Miss. 1990); *Virginia Employment Com'n v. A.I.M. Corp.*, 225 Va. 338, 302 S.E.2d 534 (1983).
- 5 *Beaumont-Jacques v. Farmers Group, Inc.*, 217 Cal. App. 4th 1138, 159 Cal. Rptr. 3d 102 (2d Dist. 2013).
- 6 *Interstate Fire and Cas. Co. v. Washington Hosp. Center Corp.*, 853 F. Supp. 2d 49 (D.D.C. 2012); *Aleksick v. 7-Eleven, Inc.*, 205 Cal. App. 4th 1176, 140 Cal. Rptr. 3d 796 (4th Dist. 2012); *Cormier v. McNeese State University*, 127 So. 3d 66 (La. Ct. App. 3d Cir. 2013); *Builders Commonwealth, Inc. v. Department of Employment and Economic Development*, 814 N.W.2d 49 (Minn. Ct. App. 2012); *Bravo v. Vargas*, 113 A.D.3d 579, 978 N.Y.S.2d 307 (2d Dep't 2014).

An employer's right of control in the performance of work and the detailed manner in which the work is done is the fundamental distinguishing element of an employment relationship. *Poe v. Univ. of Cincinnati*, 2013-Ohio-5451, 2013 WL 6569860 (Ohio Ct. App. 10th Dist. Franklin County 2013).
- 7 *In re Best*, 95 A.D.3d 1536, 944 N.Y.S.2d 783 (3d Dep't 2012).
- 8 *Builders Commonwealth, Inc. v. Department of Employment and Economic Development*, 814 N.W.2d 49 (Minn. Ct. App. 2012).
- 9 *Cormier v. McNeese State University*, 127 So. 3d 66 (La. Ct. App. 3d Cir. 2013) (payment of wages); *Builders Commonwealth, Inc. v. Department of Employment and Economic Development*, 814 N.W.2d 49 (Minn. Ct. App. 2012).

Compensation, generally, see §§ 45 to 67.
- 10 *Builders Commonwealth, Inc. v. Department of Employment and Economic Development*, 814 N.W.2d 49 (Minn. Ct. App. 2012).
- 11 *Cormier v. McNeese State University*, 127 So. 3d 66 (La. Ct. App. 3d Cir. 2013); *Builders Commonwealth, Inc. v. Department of Employment and Economic Development*, 814 N.W.2d 49 (Minn. Ct. App. 2012).

Termination, generally, see §§ 34 to 42.

- 12 Builders Commonwealth, Inc. v. Department of Employment and Economic Development, 814 N.W.2d 49 (Minn. Ct. App. 2012).
- 13 Cormier v. McNeese State University, 127 So. 3d 66 (La. Ct. App. 3d Cir. 2013).
- 14 Aleksick v. 7-Eleven, Inc., 205 Cal. App. 4th 1176, 140 Cal. Rptr. 3d 796 (4th Dist. 2012); Johnson v. Poindexter Transport, Inc. and Crane Service, 994 N.E.2d 1206 (Ind. Ct. App. 2013); Bovier v. Simon Crane Service, Inc., 381 S.W.3d 388 (Mo. Ct. App. E.D. 2012).
- 15 Quality Care Options v. Unemployment Compensation Bd. of Review, 57 A.3d 655 (Pa. Commw. Ct. 2012).
- 16 Bovier v. Simon Crane Service, Inc., 381 S.W.3d 388 (Mo. Ct. App. E.D. 2012).
- If neither the evidence nor any inferences are in conflict, then the question of whether an employment relationship exists becomes a question of law which may be resolved by summary judgment. Aleksick v. 7-Eleven, Inc., 205 Cal. App. 4th 1176, 140 Cal. Rptr. 3d 796 (4th Dist. 2012).
- 17 Dalton v. Camp, 353 N.C. 647, 548 S.E.2d 704 (2001).
- An employer's agreement to share profits with employee as compensation for his services and contract of hiring and providing for compensation in particular manner supposedly tending to induce greater energy and faithfulness on employee's part did not create a fiduciary relationship between the employer and the employee. Eden v. St. Luke's-Roosevelt Hosp. Center, 96 A.D.3d 614, 947 N.Y.S.2d 457 (1st Dep't 2012).