

EMPLOYER WINS: INDEPENDENT CONTRACTOR DETERMINATION IS BINDING ON CALIFORNIA LABOR COMMISSIONER

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As many California employers are learning the hard way these days, the misclassification of workers as independent contractors rather than employees can have far reaching consequences when an employer is audited by different governmental agencies during either a random audit or an audit that is prompted in response to a claim that has been filed. For example, not only can an employer be at risk for enforcement action by the Employment Development Department (EDD) for failing to withhold personal income taxes as well as unemployment and disability contributions, but it can also be exposed to liability for failing to comply with California's wage and hour obligations if the Labor Commissioner's Office determines the workers are misclassified.

In a recent case out of the Fourth Appellate District, however, employers received one bit of good news and that is that if it has been administratively adjudicated in one agency that an employer has properly classified workers as independent contractors (which as a side note, happens very rarely....) other state agencies are bound by that determination under the doctrine of *collateral estoppel*. (*Happy Nails & Spa of Fashion Valley v. Julie A. Su, as Labor Commissioner* (7/19/13) 217 Cal. App. 4th 1459.)

In *Happy Nails & Spa of Fashion Valley v. Julie A. Su, as Labor Commissioner* (7/19/13) 217 Cal. App. 4th 1459, after the EDD issued assessments against a number of Happy Nails salons in 2004 for unpaid taxes, unemployment contributions and disability contributions, and employment training withholdings, Happy Nails appealed. The administrative appeal lingered and finally, after a two day hearing before an administrative law judge (ALJ) which included extensive documentary evidence and testimony regarding the business operations of the salons and the relationship of the business to the cosmetologists, the ALJ issued a decision in Happy Nails' favor and found that the cosmetologists were independent contractors not employees. The EDD appealed the ALJ's decision to the California Unemployment Insurance Appeals Board (CUIAB) and it affirmed the ALJ's decision as to each Happy Nails salon in November 2008.

In the meantime, in August 2008, the Labor Commissioner (acting through the Division of Labor Standards Enforcement or DLSE) issued citations to and assessed civil penalties against Happy Nails for paying the cosmetologists without giving them properly itemized wage statements under Labor Code section 226. Happy Nails contested the citations and requested a hearing. A hearing was set for February 2009 and prior to the hearing, Happy Nails submitted a brief to the ALJ at the DLSE arguing that the evidentiary hearing was actually unnecessary because the decision by the CUIAB conclusively determined that the cosmetologists were independent contractors and thus the Labor Commissioner was *collaterally estopped* from pursuing the citation. The Labor Commissioner submitted an opposition to Happy Nails' brief arguing that the application of the doctrine of *collateral*

estoppel was inappropriate in the case. The ALJ went on to conduct a one-day hearing anyway and essentially heard the same witness testimony and received the same documentary evidence that was presented in the appeal of the EDD assessment.

On March 30, 2009, the ALJ issued findings and orders affirming the Labor Commissioner's citations and the civil penalties assessed against Happy Nails. The ALJ found that based on the factors considered when evaluating independent contractor status, the evidence showed that the cosmetologists were employees not independent contractors.

Happy Nails then filed a civil complaint against the Labor Commissioner challenging the ALJ's findings and orders in the DLSE matter and seeking a writ of administrative mandate (to essentially instruct the Labor Commissioner that it is bound by the CUIAB decision. It argued that the CUIAB's decision that the cosmetologists were independent contractors was binding on all state agencies under the doctrine of *collateral estoppel* and the DLSE's findings and orders subjected it to inconsistent legal obligations. The trial court ruled against Happy Nails and it appealed.

The Fourth Appellate District Court explained that collateral estoppel or "issue preclusion" prevents parties or their privies from re-litigating issues litigated and decided in prior proceedings. The Court explained that the following requirements must be satisfied: 1) the issue must be identical to an issue decided in a prior proceeding; 2) the issue must have been actually litigated in the prior proceeding; 3) the issue must have been necessarily decided in the prior proceeding; 4) the decision in the prior proceeding must be final and on the merits; and 5) the party against whom preclusion is sought must have been a party to or in privity with a party to the prior proceeding.

The Court reversed the trial court finding that each of the requirements were satisfied in this case. The issues in both administrative proceedings were identical because the decision maker applied the same multi-factor test to substantially the same evidence to decide whether the cosmetologists were employees or independent contractors; the issue of their status as employees or independent contractors was also actually litigated and was necessarily decided; the CUIAB's decision was final and was also on the merits because it following a full hearing in which the substance of the claim was tried and determined; and the Labor Commissioner was in privity with the EDD for purposes of collateral estoppel. The Court found that "courts have held that the agents of the same government are in privity with each other, since they represent not their own rights but the right of the government."