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SDNY Holds That USTA Umpires Are Independent Contractors, Not Employees

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A New York federal court recently held that umpires for the United States Tennis Association ("USTA") were not entitled to overtime pay under federal and state labor laws because they were independent contractors rather than employees. The plaintiffs in *Meyer v. United States Tennis Association*, No. 1:11-cv-06268 (ALC), 2014 WL 4495185 (S.D.N.Y. Sept. 11, 2014) were tennis umpires who alleged that the USTA had violated the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* ("FLSA") and New York Labor Law ("NYLL") by failing to compensate umpires for hours worked in excess of forty hours per week at the U.S. Open, the USTA's "signature event."

Both the FLSA and the NYLL provide for overtime pay for non-exempt employees. Independent contractors, however, are not employees and thus are not entitled to overtime pay under either statute. Thus, the Court turned to the question of whether the tennis umpire plaintiffs were in fact employees. Noting that "the standards for determining employee status under the FLSA and the NYLL are similar but not identical," the Court separately analyzed the umpires' status with respect to each statute.

In courts within the Second Circuit, the question of whether an employment relationship exists under the FLSA depends upon "the 'economic reality' of that relationship." Courts look at the "totality of the circumstances" and consider a number of factors, none of which is dispositive:

- "the degree of control exercised by the employer over the workers": This is the factor on which the greatest emphasis should be placed. The Court held that, although the USTA did have some degree of control over the plaintiffs in *Meyer v. USTA* (through "uniforms, best practices, evaluations, and code of conduct"), it was not so great as to weigh in favor of a finding that the umpires were employees, given that: (i) the umpires had full discretion and authority to call tennis games as they saw fit, subject to the rules of the game; and (ii) it was their decision, in the first instance, to decide whether to officiate at the U.S. Open in a given year because it was up to them to apply to officiate; additionally, they were free to decline even if accepted, were free to officiate at other non-USTA tennis tournaments, and could determine, based on their own personal and professional commitments, which days to work at the U.S. Open.
- "the workers' opportunity for profit or loss and their investment in the business": The Court held that "[t]his factor cuts both ways." Although the USTA invested far more in the U.S. Open than the plaintiffs did in officiating at it, the plaintiffs' decisions regarding whether to pursue additional certifications (leading to higher compensation), whether to work at the U.S. Open in a given year, and how many days to work generated a profit for some of the plaintiffs and a loss for others.
- "the degree of skill and independent initiative required to perform the work" : The Court held that the plaintiffs' tennis umpire jobs "required a high degree of skill and independent initiative." Given

that "'[a] position that requires special skills and independent judgment weighs in favor of independent contractor status,'" this factor weighed against an employer-employee relationship.

- 'the permanence or duration of the working relationship': The Court acknowledged that "[n]either working multiple jobs, nor relying on sources other than the alleged employer as primary income require a finding of independent contractor status," but it also was obligated to "focus on economic realities." The plaintiff umpires not only held other non-umpire jobs but also were free to, and did, work as umpires for different tennis associations. Moreover, umpires only work at the U.S. Open for, at most, three weeks a year and are not required to return. The Court held that this factor weighed in favor of independent contractor status.
- 'the extent to which the work is an integral part of the employer's business": Given that "[t]here is no doubt that umpires are integral to the success of the U.S. Open," this factor weighed in favor of an employer-employee relationship.

Having examined the "totality of the circumstances," the Court held that the plaintiffs were independent contractors for FLSA purposes.

The Court reached the same conclusion with respect to the NYLL. Like the FLSA analysis, the NYLL employment relationship inquiry looks at the totality of the circumstances, with no one factor being determinative. The "'critical inquiry'" is "'the degree of control exercised by the purported employer over the results produced or the means used to achieve the results.'" "[A]dditional factors … to determine control are whether plaintiffs (1) worked at their own convenience; (2) were free to engage in other employment; (3) received fringe benefits; (4) were on the employer's payroll; (5) were on a fixed schedule, and (6) claimed independent contractor status on their tax returns."

Given that the plaintiff umpires "worked at their convenience," were free to take other employment, did not receive fringe benefits from and were not on the payroll of USTA, and "generally claimed independent contractor status on their income tax returns," the Court held that there was "no doubt" that the plaintiffs were independent contractors for NYLL purposes.

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