Washington Court of Appeals Holds Independent Contractors Are Protected from Retaliation by the Washington Law Against Discrimination

Posted on August 12, 2014 by

The Washington courts are strict in their interpretation of the classification of individuals as employees versus independent contractors, resulting in many an employer discovering that an "independent contractor" is instead an employee. But the Washington Court of Appeals' recent ruling in *Currier v. Northland Services, Inc.*, confirms that even those individuals who qualify as bona fide independent contractors will be deemed subject to the full protections of the Washington Law Against Discrimination ("WLAD"), including protection from retaliation.

In *Currier*, the plaintiff, who worked as an independent contractor truck driver for NSI, overheard another independent contractor make a racist "joke" to a Latino driver. Currier reported the incident to NSI's quality assurance manager, who informed the dispatchers of Currier's complaint. Two days later, the dispatchers terminated Currier's contract, citing "customer service issues" and informing Currier that they had spoken with the other truck drivers and "they had decided that the joke was funny."

Currier brought action against NSI under the WLAD, alleging that the termination of his contract was retaliatory due to his complaint. After a jury found NSI liable for retaliation, NSI appealed, arguing that: (1) Currier was not protected by the WLAD's retaliation provisions because he was an independent contractor; and (2) the WLAD's retaliation provisions did not apply because his complaint stemmed from conduct by another independent contractor.

The Court of Appeals rejected both arguments. First, the court confirmed that the WLAD's prohibition on retaliation is intended to apply to independent contractors, noting that the WLAD extends protections to "any person" from retaliation by an employer or "other person." Second, the court held that the fact the racist comment overheard by Currier was made by another independent contractor did not shield NSI from liability. Instead, Currier needed only to show a *reasonable belief* that the employment practice about which he complained was covered by the WLAD. In so holding, the court noted that it was not holding NSI liable for the independent contractor's comment, but for NSI's action in terminating Currier's contract after he complained about the comment.

Following *Currier*, it is clear that Washington employers must be just as careful in taking adverse actions against independent contractors as against direct employees. Independent contractor status will not necessarily immunize

the employer from claims of discrimination or retaliation.

Tags: WLAD, Washington, against, any person, contractor, discrimination, employer, independent, law, other person, reasonable belief, retaliation

Trackbacks (0)

Comments (0)