

Federal Court In Washington Rules That Sales Agent Is A Contractor, Not An Employee

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**Hannesson
Murphy**
Partner

Earlier this week the Western District of Washington provided a succinct illustration of the difference between independent contractors and employees. In *Daskam v. Allstate* (Case No. C11-0131RSL), the court shot down an FLSA claim by an Allstate sales agent who alleged that he had been misclassified as a contractor, and in reality, should have been treated as an employee entitled to overtime wage benefits. The sales agent built his case around the fact that he had a long-term relationship with Allstate and that the company controlled many aspects of his business: setting his hours, establishing prices, telling him what products to sell, and providing him with forms to use with customers. The sales agent also claimed that he performed the same duties as Allstate employees and that his tasks of selling insurance products and providing customer service were essential to Allstate's business.

While the court reasoned that Allstate could go too far at some point in controlling the "when, where, why and how" of selling insurance such that the sales agent would become a common-law employee, it did not believe that point had been reached. The court noted that the sales agent's ability to earn profits depended on his business decisions, that he had the discretion to hire employees to assist him and that he could create a significant book of business for himself. These factors were decisive in the court's mind, since the sales agent had the freedom and autonomy to turn his one-man shop into a multi-agent office business – something that he could never do as an employee.

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