

# CONNECTICUT

## EMPLOYMENT LAW LETTER

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### **Friday the 13th lawsuit scares up lessons on employees vs. independent contractors**

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*Millions of people have seen the horror film classic Friday the 13th or the many sequels it spawned. In a surprise twist, a recent lawsuit involving the production of the movie script underscores the importance of considering whether a worker is an employee or an independent contractor.*

#### ***Employment dispute straight out of the movies***

Professional screenwriter Victor Miller wrote the screenplay for what became *Friday the 13th*. The production company he wrote the script for then sold it and the film rights to a second firm, which made the movie. And the rest is history—at least until he filed a lawsuit seeking to reclaim ownership of the screenplay.

Whether Miller could reclaim ownership turned on whether he had been an employee or an independent contractor of the production company that later assigned the movie rights to the film company. Under copyright

law, he could reclaim ownership if he had been a contractor but not if he was an employee.

### ***13-factor test comes into play***

Whether a worker such as Miller is an employee or an independent contractor is generally determined by applying a 13-factor test. Not all of the factors are relevant in any given case, and some factors are more important than others. Here they are:

**Control.** To what extent does the hiring party control the manner and means by which the work is accomplished? The more control, the more likely the worker is an employee.

**Skill.** What level of skill is required to create the work product? The more skill, the more likely the worker is an independent contractor.

**Source of instruments and tools.** Does the hiring party provide what the individual needs to complete his work, or does the worker use his own computer and other tools?

**Work location.** Does the individual work in an office or other location provided by the hiring party or a home or space the worker has rented or owns?

**Relationship's duration.** Have the hiring party and the individual had a working relationship for a long time spanning many assignments and projects, or is the current job their only one?

**Additional projects.** Does the hiring party have the right to assign additional projects to the worker, or was the individual engaged just to work on a specific project (or projects)?

**Discretion in setting schedule.** Is the worker required to work regularly scheduled hours (e.g., 9:00 a.m. to 5:00 p.m.), or can she work mostly when she pleases?

**Payment method.** Does the worker receive regular paychecks, or is he paid in one or more lump sums at various points during (or upon completion of) the project?

**Hiring assistants.** If the worker needs assistants, who is responsible for hiring and paying them—the hiring party or the worker?

**Hiring party's regular business.** Is the hiring party in the business that the worker is engaged in? For example, if the worker is a painter, is that what

the hiring party does?

**Hiring party is *in* business.** Is the hiring party a business? Businesses typically have employees, which may suggest the worker is an employee.

**Employee benefits.** Does the hiring party provide benefits traditionally conferred on employees, such as health insurance, retirement benefits, vacation time, and sick leave?

**Tax treatment.** For tax purposes, is the worker treated as an employee or a contractor?

### ***Court's decision***

Applying the factors to Miller's case, the court concluded he was an independent contractor. Although others had limited involvement in drafting the screenplay, it was primarily Miller's work, which he created by using his skill as a writer on his own typewriter and when he chose to write.

Miller wasn't given health or retirement benefits. The screenplay company also didn't deduct taxes from his compensation, which it would have done if he had been an employee.

### **Tips for avoiding employee classification nightmares**

As the *Friday the 13th* case shows, whether a worker is an employee or an independent contractor can have significant implications, particularly if the individual is creating things your business uses to make a profit (e.g., software, designs, or a tool). Outside of that context, the classification can also have a big impact on whether the worker is entitled to receive overtime pay or sue for discrimination.

Consider your needs on a situation-by-situation basis. After all, there are advantages to having employees (regularly scheduled work hours and your ability to assign additional projects) as well as independent contractors. Traditionally, the latter group isn't given expensive benefits such as health insurance or overtime pay, and they may not be able to sue under the discrimination statutes.

Whether a worker is an employee or an independent contractor also may be slightly more complicated to determine during the COVID-19 outbreak. More employees are working from home, using their own desks and chairs, and performing their tasks at least somewhat more so on their own schedule. Nevertheless, it's unlikely most people who were employees

before the pandemic will be considered contractors just because of the crisis.

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