



## ***Waste Management of Texas, Inc. v. Stevenson: Temporary Laborers – Are They Employees or Independent Contractors? It Depends***

Construction companies frequently use temporary staffing agencies to contract laborers for projects. This can save time, money, and headaches when quickly putting together a labor force. It can also raise serious liability questions. For example, who is liable if the temporary laborer injures a third party? What if the temporary laborer is injured while on the job? In both cases, the client-company is facing a potential lawsuit, and in both cases, the client-company will want to avoid liability. Whether the client-company can do that depends on whether the temporary laborer is an employee or independent contractor of the client-company.

In the first case above, the client-company may want to argue it is not vicariously liable for the laborer's conduct because the laborer is an independent contractor. In the second case, and assuming the company has worker's compensation insurance, the client-company may want to argue the laborer is an employee and is barred from suing the client-company because worker's compensation benefits are the laborer's sole remedy. So, which is it? Are temporary laborers employees or independent contractors?

The best answer is: it depends. Under Texas law, whether a laborer is an employee or an independent contractor boils down to whether the company utilizing the temporary laborer has the "right to control" the laborer's progress, details, and methods of work. To determine whether such a right exists, courts look two places:

- (1) the underlying contract for the laborer; and
- (2) the conduct of the company.

If there is evidence that the company was exercising actual control, there is an inference that the company had the right to control the laborer. These concepts were recently discussed in detail in the Texas Supreme Court case of *Waste Management of Texas, Inc. v. Stevenson*.

Robert Stevenson was a temporary laborer assigned to work for Waste Management of Texas, Inc. He sued the company when an employee of Waste Management injured him. Stevenson's case was dismissed because Waste Management had worker's compensation insurance and the trial court found that Stevenson was an employee. On appeal, however, Stevenson argued he was an independent contractor and could sue Waste Management. When the case made its way to the Texas Supreme Court, the issue was whether, for purposes of worker's compensation, Stevenson was an employee or independent contractor.

In the end, Court ruled that Stevenson was an employee and his claims were barred despite the underlying contract expressly stating Stevenson was an independent contractor and not an employee. The Court explained that while contractual labels are a factor in determining whether there is a right to control, it is not a controlling factor. In other words, courts can go beyond the contract to determine if there is an implied right to control based on conduct. In that case, the Court noted that Waste Management clearly had the right to control Stevenson because it controlled Stevenson's schedule, provided his equipment, and told him what to do, when to do it, and how to do it.

There are a variety of takeaways from *Stevenson*. Most notably, construction companies need to be aware of when temporary laborers can be classified as independent contractors or employees, and how each classification creates different liabilities. By doing so, companies put themselves in a better position to take steps to protect themselves before a dispute arises. For example, knowing a temporary laborer will likely be classified as an employee may incentivize a company to obtain worker's compensation insurance while allowing it to aggressively negotiate for indemnity, defense, and additional insured clauses with the staffing agency.

**For additional information, please contact [Adam Robertson](#).**