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**ALLEGHENY COUNTY LABOR COUNCIL
REPORT OF LEGAL COUNSEL
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PENNSYLVANIA COMMONWEALTH COURT ISSUES PRO-EMPLOYEE DECISION IN UNEMPLOYMENT COMPENSATION CASE

On March 5, 2014, a three-judge panel of the Commonwealth Court unanimously ruled in the case of *Staffmore v. Unemployment Compensation Board of Review* that Jesse Frasch (the “Claimant”) could not be considered a self-employed independent contractor because the staffing company failed to show he performed for other companies the same kind of work he provided to the staffing company.

Section 402(h) of the Law provides that an employee will be ineligible for benefits for any week in which he is “self-employed”. Given this Section of the law, the issue in dispute was whether Frasch was an “employee” and therefore eligible for UC benefits or whether he was a “self-employed” independent contractor and thus ineligible for benefits. In order for a claimant to be an independent contractor, he or she must be “...customarily engaged in an independently-established trade, occupation, profession or business.” 43 P.S. § 753(1)(2)(B)

The employer in this case, Staffmore, is a staffing service that provides workers to client agencies to assist in the care of children with emotional, behavioral or other issues. Frasch began working with Staffmore as a Therapeutic Support Staff in November 2010. In that capacity, Frasch was free to accept or reject cases. Frasch signed an independent contractor agreement with Staffmore and worked on a single case offered by Staffmore’s client, Delaware Valley Children’s Center for 7 hours per week. Frasch was supervised by a behavioral specialist who developed the treatment plan that Frasch was required to follow. The behavioral specialist was not Staffmore’s employee. Frasch’s hours and work location were not determined by Staffmore but, instead, by Delaware Valley. Frasch also worked for Chester Community Charter School (CCCS) and Central Bucks School District (CBSD) while working the Staffmore assignment. On April 16, 2012, Delaware Valley ended the relationship with Staffmore. On April 24, 2012, Frasch advised Staffmore that he would no longer accept assignments from it because he was currently teaching, would be spending each day during the summer with his son, and was expecting to teach in the fall. He then applied for UC benefits.

Staffmore argued Frasch he was an independent contractor and thus ineligible while he claimed he was an employee and therefore entitled to the receipt of benefits.



The Court relied upon earlier precedent holding that, “a determination regarding the existence of an employer/employee relationship is a question of law that is determined on the unique facts of each case.” *Danielle Viktor, Ltd. v. Dep’t of Labor & Indus., Bureau of Emp’r Tax Operations*, 586 Pa. 196, 212, 892 A.2d 781, 791 (2006). Moreover, the court held that because Frasch was not directed or controlled by Staffmore, the only issue before the court was whether Staffmore met its burden of establishing that the claimant was "customarily engaged in an independently established trade, occupation, profession or business," as outlined in 43 P.S. Section 753(1)(2)(B).

Judge Anne Covey authored the decision of the Court and held that although claimant only worked seven hours per week for Staffmore and worked for Chester Community Charter School and Central Bucks School District as a teacher, there is no evidence that he provided “therapeutic support staff services” to either school or anyone else and therefore he was not “customarily engaged in an independently established trade, occupation, profession or business”. Accordingly, the Court concluded that Frasch may receive unemployment compensation benefits even though he worked at Staffmore only seven hours a week and held two other jobs- teaching in two school districts.

Judge Covey was joined by Judges Bernard L. McGinley and Rochelle S. Friedman.

Respectfully submitted,

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