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San Diego accuses Campbell's Company of worker misclassification

The case illuminates how authorities are enforcing California's strict ABC independent contractor test

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Anyone who opens a can of Campbell's soup labeled "Cream of Mushroom" knows what's inside will match the label.

Late last month, San Diego City Attorney Heather Ferbert filed a [lawsuit](#) in San Diego Superior Court alleging that Campbell's mislabels some of its workers.

At issue is whether Campbell's, through its wholly owned snack producing subsidiaries Snyder's-Lance and Pepperidge Farm, misclassifies as independent contractors hundreds of workers who distribute its products directly to retail stores and thereby violates California's unfair competition law.

The case illuminates how authorities are enforcing California's strict ABC independent contractor test, codified at [Labor Code section 2775](#).

Core allegations

The complaint alleges that manufacturers use a "direct-store-delivery" (DSD) model to get valuable retail shelf space. A manufacturer "enters contracts with retailers to stock, rotate, and otherwise merchandise products directly on the retail shelves rather than going through a central distribution hub." The complaint refers to individual workers who help execute this model as "distributors" and says Campbell's makes these workers sign agreements that mischaracterize them as independent contractors.

By misclassifying these workers as independent contractors, says the complaint, Campbell's deprives them of the bundle of rights employees enjoy, including minimum wage, overtime, expense reimbursement and sick pay. Campbell's and its co-defendants also allegedly thereby "evade state and federal employment taxes, workers compensation coverage, and take unfair advantage over law abiding competitors."

To avoid liability, Campbell's must prove its relationship with the distributors meets all three parts of the ABC test. The complaint alleges Campbell's can't satisfy any part of the test.

A – Campbell's alleged control over distributors

Part A of the test requires the hiring entity to prove the workers are free from the hiring entity's control in performing the work, both under any contract and in actual practice. Campbell's may set what the worker must accomplish, but not how the worker must accomplish it.

The complaint alleges Campbell's controls how the distributors perform their work in at least 15 distinct ways, including by: defining a distributor's territory; determining which products distributors may deliver; setting the rate of distributors' commissions; and providing written "suggested" guidelines for distributors' interactions with retailers and with Campbell's and its co-defendants.

B – Campbell's usual course of business

Part B of the test requires the hiring entity to prove the work performed is "outside the usual course of" its business. How that "business" is defined is key to this part of the analysis.

The complaint alleges the defendants' business is "to distribute snack food products to retail customers through a direct-store-delivery model" and that defendants' contracts with retailers describe their business that way. Distributors allegedly pick up snack food products from defendants' warehouses, deliver them to retail stores, and stock retail shelves," tasks that are allegedly at "the heart of" the DSD model.

C – Distributor pursuing recognized trade?

The complaint further alleges that defendants cannot satisfy part C of the test, which requires the hiring entity to show the worker is "engaged in an independently established trade, occupation, or business of the same nature" of the work performed. Defining the nature of the work and how much independent economic leverage the worker holds are keys to this part of the analysis.

The complaint narrowly defines the distributors' work as "gathering and delivering snack food products," requiring no specialized skill. While the complaint acknowledges some distributors form corporations at defendants' alleged insistence, distributors allegedly "do not take meaningful steps to establish and promote themselves as independent businesses, such as advertisements or providing their services to the public. Rather, distributors work exclusively for Defendants under (non-negotiable) terms and conditions."

Relief sought

In addition to an order barring defendants from continuing to classify distributors as independent contractors, the complaint seeks statutory civil penalties of up to \$2,500 for each violation of each distributor's wage rights and an additional penalty of up to \$2,500 for each violation of the rights of distributors who were 65 or older when each violation occurred. The complaint also seeks an order requiring defendants to "restore" to distributors wages they should have received as employees.

The city attorney is right in asserting in the complaint that courts will look past the independent contractor label Campbell's affixes to its distributors. The outcome of the dispute will depend on whether Campbell's can prove the label matches in all relevant respects what's inside the relationship.

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