

*Monthly Memo*

**IS A NEWSPAPER CARRIER AN EMPLOYEE  
OR  
AN INDEPENDENT CONTRACTOR?**

The answer to the above question is: It depends!

It does not matter that there is a written agreement calling the individual an independent contractor and signed by both parties; It does not depend on whether the parties believe the individual doing the work is an employee or independent contractor; Nor does it depend on the duties being performed. It does, however, depend on how the duties are required to be performed.

On May 1, 2008, a decision was issued in the case of *Antelope Valley Press v. Poizner (State Compensation Insurance Fund)* in which the California Court of Appeals determined that the newspaper carriers were employees **not** independent contractors. Antelope Valley Press prints and sells newspapers and uses individuals to deliver the papers to subscribers. The parties enter a brief written document captioned "Independent Contractor Distribution Agreement" which states that the individual is an independent contractor and not an employee of Antelope Valley Press.

The Independent Contractor Distribution Agreement stated the time the employees were to deliver the newspapers, how to package the newspapers, how to deal with customer complaints, penalties that would be assessed if the individual did not follow the rule set forth, and, specific financial penalties were listed. Since Antelope Valley Press did not consider the carriers to be employees, no workers' compensation was in place to cover the individuals if injured while performing the duties described. After an audit was undertaken by the State Compensation Insurance Fund of Antelope Valley Press, it was determined that the individuals were employees and not independent contractors. Litigation was filed by Antelope Valley Press. The trial court denied the claim that the individuals were independent contractors as did the Court of Appeals.

The Court of Appeals determined that the "the right to control the manner and means by which the person does his or her job" determines whether the person is an employee or an independent contractor. The Court of Appeals, in referring to the contract signed by the parties, found that many specific steps that were required to be taken by the individual; financial penalties for not doing the job correctly; the duties required of the carriers were the same as those individuals that Antelope Valley Press considered to be employees; and, the individuals had a lack of skills and/or specialized training. All of the foregoing indicated the individuals were not independent contractors but employees and therefore must be covered by workers' compensation insurance as all other employees of Antelope Valley Press.

5/2008

*Sims & Layton*

**REMINDER : THURSDAY - JUNE 19, 2008 - WAGE & HOUR SEMINAR**