

FAST FIVE

RHODE ISLAND APPELLATE PRACTICE

RHODE ISLAND BUSINESSES: ARE YOU TOO CONTROLLING?

Your employees, but not your independent contractors, may think so.

A Rhode Island Supreme Court decision this term serves as an important reminder for businesses operating in Rhode Island of the demarcation between those who are employees and those who are independent contractors. See [Cayer v. Cox Rhode Island Telecom, LLC, No. 2012-23-Appeal](#).

As a general matter, “one who employs an independent contractor is not liable for the negligent acts of that contractor.” *Id.* at 5 (quoting *Bromaghim v. Furney*, 808 A.2d 615, 617 (R.I. 2002)). For this rule to apply, the independent contractor truly must be independent. “The test [as to] whether a person is an independent contractor is based on the employer’s right or power to exercise control over the method and means of performing the work and not merely the exercise of actual control.” *Id.* at 5 (quoting *Absi v. State Dep’t of Administration*, 785 A.2d 554, 556 (R.I. 2001)).



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Businesses looking to reduce their liabilities should consider whether their independent contractors are, in fact, independent. The power or the actual exercise of too much control over an independent contractor may transform the contractor into an employee.

In *Cayer*, the relationship between the company and the contractor was governed by an agreement that specified that (1) the company was interested only in the results obtained as a result of the work performed and (2) the manner and means of conducting the work was within the contractor's control. *Id.* at 6. Consistent with the agreement, the company did not oversee the work of the contractor as it was being performed. *Id.* at 8. The company's only oversight of the contractor's work consisted of spot inspections, conducted one to three days after the work had been performed. *Id.* at 7. A variety of other factors also confirmed that the contractor was properly classified as an independent contractor, including that the company paid the contractor by the job and did not supply the contractor with a vehicle, uniform, boots, tools, rain gear or snow gear. *Id.* All of these factors contributed to the Supreme Court's conclusion that the company did not have the requisite power to control the contractor's work and, therefore, the contractor was properly classified as an independent contractor. *Id.* at 8. Consequently, the company could not be held vicariously liable for the independent contractor's negligence. *Id.*

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