

Third Circuit Adopts and Expands 'Employee' Test for Title VII Cases

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The Third Circuit Court of Appeals (which includes PA, NJ, DE) recently adopted a six part test to determine whether a shareholder director of a company could be considered an employee and thus eligible to file a discrimination lawsuit under Title VII of the Civil Rights Act of 1964. The test distinguishes whether a person is an employee vs. an employer, and, as a result, is able to bring suit under Title VII if deemed an employee. In the present case, the Third Circuit ruled that the plaintiff, Robert Mariotti, had sufficient authority to control the business to preclude his claim that he should be considered an employee under Title VII. In so holding, the Court dismissed his claim.

Robert Mariotti was a long term shareholder director of this family's business, Mariotti Building Products. He claimed that he was ousted from his role in managing the business and from its board of directors because other family members disagreed with his religious beliefs.

Under the six part test relied on by the Third Circuit, consideration should be given to whether an individual exhibits a level of "control" over a business entity so that he or she should be considered the "employer" rather than an employee under the applicable antidiscrimination statutes. The Court cautioned that the relevant question is not purely whether the individual exhibits control over the business, but rather whether the individual has the right to exhibit such control. The elements of the six part test are:

1. whether the organization can hire or fire the individual or set the rules and regulations of the individual's work;
2. if the organization can hire or fire or set work rules and regulations, to what extent the organization supervises the individual's work;
3. whether the individual reports to someone higher in the organization;
4. if the individual does report to someone higher up, to what extent he or she is able to influence the organization;
5. whether the parties intended that the individual be an employee, as expressed in written agreements or contracts; and
6. whether the individual shares in the profits, losses, and liabilities of the organization.

As a result of this opinion, companies should carefully review and evaluate the level of control it authorizes a shareholder director to have in the company's operations.