

# 07.18.13

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## Hargrove v. Sleepy's

The Employee/Independent Contractor issue presents itself again in NJ. This time before the Supreme Court of New Jersey. The question before the Court is what test should be used to distinguish between employees and independent contractors for purposes of wage-and-hour law compliance. The U.S. Court of Appeals for the Third Circuit in *Hargrove v. Sleepy's*, has sought certification from New Jersey's top court on which test to use.

Plaintiffs, Sam Hargrove, Andre Hall, and Marco Eusebio allege that the "Independent Driver Agreements" they signed to provide delivery services were a ruse for Sleepy's to avoid paying them employee benefits. Instead, they claim to be employees entitled to overtime, health and pension benefits, and family and medical leave. On March 29, 2012, U.S. District Judge Peter Sheridan granted Sleepy's motion for summary judgment dismissing the case, finding that the drivers are independent contractors pursuant to the "right to control" test from *Nationwide Mutual v. Darden*, 503 U.S. 318 (1992). That test considers factors like the skill required for the work, where it takes place, who provides the tools, who sets the work schedule, what method of payment is used, whether benefits are provided and how it is treated for tax purposes.

In this case, Hargrove and Eusebio signed their contracts with Sleepy's through LLCs that they formed, while Hall signed individually. In addition, plaintiffs bought and maintained their own trucks, paying for gas, tolls, tickets, and repairs; were free to deliver for other companies; and none filed tax documents identifying Sleepy's as their employer. However, Sleepy's controlled the delivery schedules; plaintiffs wore Sleepy's uniforms; used scanners provided by Sleepy's for each delivery; and under a separate contract, two of the plaintiffs were paid by the company to drive trucks with the Sleepy's logo on it. Moreover, any driver working for plaintiffs had to pass a background check paid for by Sleepy's and they reserved the right to audit plaintiffs' trucks to assert that rules were being followed. Judge Sheridan found that the *Darden* test overwhelmingly showed that plaintiffs were independent contractors, but did not explain why that test was applied.

The Supreme Court accepted the case on July 10 and briefing will be done on Monday.

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