SEYFARTH SHAW

Management Alert

Hirer of Independent Contractor Not Liable to Injured Contractor Employee

By Jennifer Nunez and David Kadue

Seyfarth Synopsis: *The California Court of Appeal upheld the Privette doctrine, holding that an independent contractor's employee generally may not recover tort damages for work-related injuries from the contractor's hirer.*

The Facts

Bernie Alvarez, a marine mechanic, worked for Pacific Crane Maintenance Company. Evergreen Container Terminal—operating a marine container terminal in the Port of Los Angeles—had contracted with Pacific Crane to provide maintenance services at the terminal. The contract said that Pacific Crane would use its best efforts to prevent injury to its employees and would comply with all safety rules and regulations. The contract did not address any obligation by Evergreen to ensure safe conditions at the terminal.

Alvarez injured himself when he drove a maintenance van into a shipping container. He sued Evergreen for negligently obstructing the driving lane with the shipping container.

Evergreen successfully moved for summary judgment, citing the *Privette* doctrine. Alvarez appealed, arguing that the *Privette* doctrine did not apply because Evergreen retained control over safety conditions at the worksite and affirmatively contributed to his injuries.

The Court Of Appeal's Decision

The Court of Appeal affirmed summary judgment. In *Privette v. Superior Court*, a 1993 case, the California Supreme Court held that an independent contractor's employee generally may not sue the contractor's hirer to recover tort damages for work-related injuries. *Privette* recognizes the principle that the hirer of an independent contractor generally has no right to control the details of the work the independent contractor will provide, and presumptively delegates to the contractor the duty to provide a safe workplace for the contractor's employees.

An exception—the retained-control exception—applies where the hirer retains control over the independent contractor's work and safety conditions at the worksite. This exception can apply when the hirer actively participates in, or asserts control over, how the job should be done, or otherwise interferes with the manner and means of accomplishing the work. The exception also can apply when the hirer fails to undertake a promised safety measure at the worksite. But the exception did not apply here, as Alvarez did not present evidence that Evergreen (1) directed him to perform his work in any particular

manner, or (2) promised (and failed) to undertake any safety measure at the worksite. Rather, it was the independent contractor, Pacific Crane, that was responsible, under its contract, for Alvarez's safety on the job.

What *Alvarez* Means For Employers

Alvarez is important for reiterating that, in today's ever-evolving gig economy, an independent contractor's employees generally may not recover tort damages for work-related injuries from the contractor's hirer. Companies that retain staffing companies should (1) review the staffing companies' employment agreements to determine whether any promise to undertake safety measures are provided for, and (2) be wary of dictating the manner in which a job or assignment should be completed.

If you would like further information, please contract Jennifer Nunez at jnunez@seyfarth.com, or David Kadue at dkadue@seyfarth.com.