



16 (March 1, 2017, email).

The relationship between Mendoza and LaPrensa ultimately deteriorated, and Mendoza quit. After Mendoza quit, she spoke with IWD, and one result of the conversation was an investigation into whether Mendoza was an independent contractor or employee of LaPrensa. On August 21, 2017, IWD issued a decision stating an employer-employee relationship existed between Mendoza and LaPrensa. LaPrensa contested this, and after further review, IWD issued an amended decision on September 6, 2017, that no employer-employee relationship existed. Mendoza appealed the determination.

On appeal, Mendoza argues she was an employee of LaPrensa. To support this claim, Mendoza testified she interviewed for a job, considered LaPrensa her employer, called Lopez her boss, and performed duties for the company. She also submitted some documentation stating that at least one of the entities purchasing advertising in the paper thought of her as an employee despite not knowing the employment arrangement. *Id.*, at p. 20. In response, IWD maintains its position, focusing primarily on the commission and not hour pay. IWD also relies on the fact that, when pressed on the difference between an employee and an independent contractor, Mendoza revealed she did not know the difference. IWD claims this shows her impressions are not reliable, and when questioned by the Tribunal as to the procedural posture of this case, IWD maintains that Mendoza does not have standing to challenge IWD's decision since she is not the employer or adversely affected at this time.

### **LAW AND ANALYSIS**

For purposes of unemployment compensation, an “employer” is defined as an employing unit that, in any calendar quarter in the current or preceding calendar year, paid wages of \$1,500 or more, or employed at least one individual for some portion of a day in each of twenty different calendar weeks during the current or preceding calendar year. Iowa Code § 96.19(16)(a). “Employment” is defined as service performed for wages or under any contract of hire, written or oral, express or implied. *Id.* § 96.19(18)(a). “Services performed by an individual for wages shall be deemed to be employment . . . unless and until it is shown to the satisfaction of the department that such individual has been and will continue to be free from control or direction over the performance of such services, both under the individual’s contract of service and in fact.” *Id.* § 96.19(18)(f)(1)

IWD promulgated administrative rules to expound on the circumstances that give rise to an employment relationship as opposed to an independent contractor status. Under the governing rules, “[t]he relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished.” 871 Iowa Administrative Code (“I.A.C.”) § 23.19(1). Continuing:

An employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. The right to discharge or terminate a relationship is also an important factor indicating that the person possessing that right is an employer. Where such discharge or termination will constitute a breach of contract and the discharging person may be liable for damages, the circumstances indicate a relationship of independent contractor. Other factors characteristic of an employer, but

not necessarily present in every case, are the furnishing of tools, equipment, material and a place to work to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, that individual is an independent contractor. An individual performing services as an independent contractor is not as to such services an employee under the usual common law rules.

Id. § 23.19(1). Other considerations exist:

The nature of the contract undertaken by one for the performance of a certain type, kind, or piece of work at a fixed price is a factor to be considered in determining the status of an independent contractor. In general, employees perform the work continuously and primarily their labor is purchased, whereas the independent contractor undertakes the performance of a specific job. Independent contractors follow a distinct trade, occupation, business, or profession in which they offer their services to the public to be performed without the control of those seeking the benefit of their training or experience.

Independent contractors can make a profit or loss. They are more likely to have unreimbursed expenses than employees and to have fixed, ongoing costs regardless of whether work is currently being performed. Independent contractors often have significant investment in real or personal property that they use in performing services for someone else.

Employees are usually paid a fixed wage computed on a weekly or hourly basis while an independent contractor is usually paid one sum for the entire work, whether it be paid in the form of a lump sum or installments. The employer-employee relationship may exist regardless of the form, measurement, designation or manner of remuneration.

The right to employ assistants with the exclusive right to supervise their activity and completely delegate the work is an indication of an independent contractor relationship.

Id. §§ 23.19(2)-(5). As is evident from the considerations of all these factors, the determination of the existence of an employment relationship turns on “the particular facts of each case.” Id. § 23.19(6). “If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial.” Id. § 23.19(8).

In this case, it is not entirely clear Mendoza has the standing to challenge IWD’s determination that no employment relationship existed at this point because the decision only concerns LaPrensa’s lack of liability for employment tax due to there being no employer-employee relationship. Iowa Code § 96.7(4)(noting that the “affected employing unit or employer may appeal” a liability determination). It is true that, under IWD’s rules, “employers or other interested parties” may be appeal, but the overall tenor of the rules do not suggest this includes workers. See 871 I.A.C. § 23.52. Regardless, IWD’s decision is proper. Mendoza was paid on commission. She was generally not reimbursed for expenses,

and Mendoza set her own schedule. Mendoza also determined how much work she would do and intermittently secured her own help. Outside of receiving occasional sales tips and leads, Mendoza controlled the details and means by which the purpose of her work was accomplished. Further, 1099s were demanded and sent by the parties. As such, nothing material in the record suggest an employment relationship. Mendoza testified she thought of herself as an employee, but it is clear that she does not understand what the difference between an independent contractor and employee is. She also admitted she was paid on commission, set her own schedule, secured assistance, and the other basic details of the relationship, all of which demonstrate her status as an independent contractor. Further, her letters including from one business that believed Mendoza was an employee are not persuasive because such entities, by their own admission in the letters, did not know the specific arrangement between Mendoza and LaPrensa. Accordingly, IWD's decision is AFFIRMED.

### **DECISION**

The appeal is AFFIRMED. IWD shall take any further action necessary to implement this decision.

IT IS SO ORDERED.

Dated this the 28<sup>th</sup> day of December, 2017.



Jonathan M. Gallagher  
Administrative Law Judge

Cc: Maria Mendoza, (By mail)  
Lorena Lopez, La Presna, LLC (By mail)  
David Steen, IWD (By email)  
Nicholas Olivencia, IWD (By email)  
Justin Knudson, IWD (By email)  
Brooke Wilson, IWD (By email)  
Carie O'Brien, IWD (By email)

### **APPEAL RIGHTS**

This decision constitutes final agency action.

Any party may file with the presiding officer a written application for rehearing within 20 days after the issuance of the decision. A request for rehearing is deemed denied unless the presiding officer grants the rehearing request within 20 days after its filing.

Any party may file a petition for judicial review in the Iowa district court within 30 days after the issuance of the decision or within 30 days after the denial of the request for rehearing.