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Writing Sample

This writing sample is an objective legal memorandum written as part of my first-semester Legal Research and Writing course. The memorandum analyzes whether a worker classified as an independent contractor qualifies as an employee under the Family and Medical Leave Act and is therefore entitled to unpaid, job-protected leave.

Context: The memorandum addresses a hypothetical involving a social media influencer and brand ambassador seeking maternity leave from a cookware company. Applying the economic reality test adopted under the FMLA and FLSA, the memorandum evaluates factors including employer control, opportunity for profit or loss, investment, special skills, permanence of the working relationship, the worker's role in the business, and overall economic dependence. The memorandum concludes that the worker would likely be classified as an employee and entitled to statutory leave protections.

MEMORANDUM

To:	Amir Moore, Junior Partner
From:	Katelin Walsch, Associate
Date:	November 23, 2025
Subject:	Kyra Lee - Whether Kyra Lee is Entitled to Unpaid, Job-Protected Leave Under the Family Medical Leave Act Because She is an Employee as Opposed to Independent Contractor

Question Presented

Under the Family and Medical Leave Act ("FMLA"), a worker is entitled to unpaid leave if he or she is an "employee." The courts consider seven factors to determine whether a worker is an employee under the FMLA: (1) control, (2) opportunity for profit or loss, (3) investment, (4) special skills, (5) permanence of the working relationship, (6) integral part of the business, and (7) the total economic reality of the relationship.

Kyra Lee works for Kitchen + Co. ("K+C") as a brand ambassador and social media influencer. She is pregnant and plans to take unpaid leave from K+C following the birth in January 2026. Is Lee an employee of K+C?

Short Answer

Probably. K+C must approve all of Lee's posts, and she receives a fixed monthly fee with no additional compensation. She provides her own phone and computer, does not use any special skills, and does not sell or manufacture cookware. She has worked for K+C for four years under a noncompete agreement and depends on K+C for continued employment.

Statement of Facts

Kyra Lee is a chef and television personality with a large social media following. R. 5. She is also a brand ambassador and social media influencer for K+C. R. 1. K+C is a New Jersey based company that sells gourmet cookware and kitchenware. Id. In June 2022, Lee and K+C entered into a Social Media Services Agreement ("the Agreement") under which Lee would provide promotional and endorsement services. R. 2, 5.

Under the Agreement, Lee is required to post social media content approved by K+C three times a month, with at least one K+C approved hashtag, appear at five events per year, and participate in up to three press interviews per event. R. 5, 6. K+C retains the right to draft content for Lee, and to edit, adapt, or revise her content at its discretion. R. 5, 7. The Agreement includes a noncompetition clause prohibiting Lee from promoting or working with other cooking or kitchenware companies. R. 9.

K+C pays Lee a fixed monthly payment. R. 7. After the initial one-year term, the Agreement was renewed in June 2023, June 2024, and June 2025, each with a 10% pay increase. R. 2. In those years, Lee earned $12,000 per month, then $13,200, then $14,520, and finally $15,972. R. 2. Lee is not entitled to any additional compensation, fees, or royalties. R. 7.

Lee received a $20,000 advance for her forthcoming cookbook and is in the process of opening a restaurant, but her primary income remains from her work with K+C. R. 1, 3. Lee is pregnant and plans to take a 12-week unpaid leave from K+C following the birth in January 2026. R. 1.

<u>Applicable Statutes</u>

The Family and Medical Leave Act 29 U.S.C. § 2612(a)(1)(A) states:

> An eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following:
>
> (A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.

29 U.S.C. § 2612(a)(1)(A) (2018).

The Family and Medical Leave Act 29 U.S.C. § 2611(2)(A)(3) states:

> The term "employee" has the same meanings given such terms in subsections (c), (e), and (g) of section 203 of this title.

29 U.S.C. § 2611(2)(A)(3) (2018).

The Fair Labor Standards Act 29 U.S.C. § 203(e)(1) states:

> The term "employee" means any individual employed by an employer.

29 U.S.C. § 203(e)(1) (2018).

Discussion

The issue is whether Kyra Lee is entitled to unpaid, job-protected leave under the FMLA as an employee of K+C (as opposed to an independent contractor). Lee is pregnant and is due to give birth in January 2026. R. 1. She wants to take a 12-week unpaid leave from K+C following the birth. R. 1.

Under the FMLA, "employees" are entitled to twelve weeks of leave "because of the birth of a son or daughter." 29 U.S.C. § 2612(a)(1)(A). The FMLA adopts the definition of "employee" from the Fair Labor Standards Act ("FLSA"). 29 U.S.C. § 2611(3). An employee under the FLSA is "any individual employed by an employer." 29 U.S.C. § 203(e)(1).

In the absence of a clear statutory definition, the courts apply the "economic reality" test to determine whether a worker is an employee or an independent contractor. Verma v. 3001 Castor, Inc., 937 F.3d 221, 230 (3d Cir. 2019). The courts consider six factors under this test, and no single factor is "dispositive." Id.

The six factors are: (1) "the degree of the employer's right to control the manner in which the work is performed"; (2) the worker's "opportunity for profit or loss depending on managerial skill"; (3) the worker's "investment in equipment or materials"; (4) whether "the service requires a special skill"; (5) "the permanence of the working relationship"; and (6) whether "the service is an integral part of the employer's business." Id. at 229. Courts then consider the "'circumstances of the whole activity' to determine whether the worker is 'dependent upon the business'" he or she works for, as a "matter of economic reality." Id. at 230.

1. **Right to Control**

The first issue is whether K+C controls the manner and means of Lee's work. Courts consider "the degree of supervision over the worker, control over the worker's schedule, and instruction as to how the worker is to perform his duties." Zanes v. Flagship Resort Dev., LLC, No. 09-3736 (JEI/JS), 2012 WL 589556, at *5 (D.N.J. Feb. 22, 2012).

For example, in Verma, dancers for a nightclub selected their own shifts. Verma, 937 F.3d at 230. The nightclub required a mandatory tip-out, fined dancers for tardiness, dictated their physical appearance, and selected the music dancers performed to. Id. It banned smoking, chewing gum, and phone use while performing. Id. It also prohibited dancers from changing early and set the price and length of private dances. Id.

The court held that the right to control factor favored employee status because the nightclub "exerted overwhelming control over the performance of [the dancers'] work." Id. See also Naik v. 7-Eleven, Inc., No. 13-4578 (RMB/JS), 2014 WL 3844792, at *5 (D.N.J. Aug. 5, 2014) (holding that a convenience store exercised control over franchisees by dictating store operations, regulating temperature, requiring uniforms, monitoring conduct, imposing fines, and restricting outside business activities).

Like the nightclub's pervasive control over the dancers in Verma, K+C controls how Lee creates social media content. See Verma, 937 F.3d at 230; R. 5. Lee must submit all posts to K+C for approval, and she must include at least one hashtag that K+C approves. R. 5. K+C may draft content for Lee, and can adapt, edit, or revise any content she creates. R. 5, 7. Lee must engage with followers by replying to a "reasonable number" of comments on each post. R. 5.

K+C also controls Lee's schedule by requiring her to post at least three times per month and appear at five K+C events each year. R. 5, 6. At each event Lee must participate in up to three press interviews, with mutually approved media outlets. R. 6. Therefore, the right to control factor likely favors employee status.

2. **Opportunity for Profit or Loss**

The second issue is whether Lee had an opportunity for profit or loss based on managerial skill. Opportunity for profit or loss may exist when a worker's earnings "are tied to their performance" or when the worker "makes a capital investment that may be lost if the business does not succeed." Li v. Renewable Energy Servs. Inc., No. 11-3589, 2012 WL 589567, at *8 (D.N.J. Feb. 22, 2012).

For instance, in Li, a research scientist received a fixed salary unrelated to performance, made no capital investment in the company, and had no stock options. Id. Therefore, the court held he lacked any opportunity for profit or loss, and this factor favored employee status. Id.

Similarly, Lee receives a fixed monthly payment unrelated to performance. See Li, 2012 WL 589567, at *8; R. 7. Lee earned $12,000 per month during the first year, and her pay increased by 10% with each renewal to $13,200, then $14,520, and then $15,972. R. 2. She is not entitled to any "additional compensation, fee, royalty, residual, or payment of any kind." R. 6. Accordingly, the opportunity for profit or loss factor likely favors employee status.

3. **Investment in Equipment or Materials**

The third issue is whether Lee invests in equipment or materials for her work. Courts consider "the individual investment each worker must make to do his job." Adami v. Cardo Windows, Inc., No. 12-2804 (JBS/JS), 2016 WL 1241798, at *9 (D.N.J. Mar. 20, 2016).

For instance, in Adami, window installers had to provide their own truck, tools, and insurance. Id. The court held that this factor favored independent contractor status because the installers could not perform their work without these investments. Id.

K+C requires Lee to use her own phone and computer, and she cannot perform her work without this equipment. R. 6. Therefore, the investment in equipment or materials factor likely favors independent contractor status.

4. **Special Skills Required**

The fourth issue is whether Lee's work requires special skills. "Unskilled workers are more likely to be deemed employees because '[r]outine work which requires industry and efficiency is not indicative of independence and nonemployee status.'" Li, 2012 WL 589567, at *8. Courts consider whether workers "have the skills necessary to locate and manage discrete work projects…or whether the skills are of the task specific, specialized kind that form a piece of a larger enterprise" Id.

For instance, in Li, the research scientist utilized his expertise in chemistry. Id. However, the court held that the special skills factor favored employee status, because his skills were used on a "specific part" of the company's larger work and were completed at the company's direction. Id. See also Martin v. Selker Bros., Inc., 949 F.2d 1286, 1293 (3d Cir. 1991) (holding that the special skills factor favored employee status for gas station operators because pumping gas was "routine work" and any skills were not used independently due to the company's control over daily operations).

Similarly, Lee's work may require creativity, but it merely forms a specific part of the company's broader marketing efforts. See Li, 2012 WL 589567, at *8.; R. 5. She does not manage her own projects; K+C provides the products, pre-approves her content, and may revise her posts. R. 5. Accordingly, the special skills factor likely favors employee status.

5. **Permanence of Working Relationship**

The fifth issue is the permanence of the relationship between Lee and K+C. Courts consider "the exclusivity, length, and continuity of the relationship." Zanes, 2012 WL 589556, at *6.

For instance, in Naik, franchisees signed a four-year lease with a convenience store, along with a noncompete agreement prohibiting them from engaging with competitive businesses. Naik, 2014 WL 3844792, at *8. The court held that this factor favored employee status because four years was a long, continuous relationship, and franchisees worked exclusively for the convenience store. Id.

Similarly, K+C and Lee renewed their initial one-year contract three times, resulting in a continuous four-year relationship. See Naik, 2014 WL 3844792, at *8; R. 2. Lee works exclusively for K+C because the Agreement prohibits her from working with competitors. R. 9. Accordingly, the permanence of working relationship factor likely favors employee status.

6. **Integral Part of Business**

The sixth issue is whether the services Lee renders are an integral part of K+C's business. Courts have held that "regardless of the amount of work done, workers are more likely to be 'employees' under the FLSA if they perform the primary work of the alleged employer."

Donovan v. DialAmerica Mktg., Inc., 757 F.2d 1376, 1385 (3d Cir. 1985). See Verma, 937 F.3d at 232 (holding that dancers were integral to the nightclub's business because the club's "primary offering" was viewing dancers on stage and receiving private dances).

Lee does not perform K+C's primary work. R. 5. K+C manufactures and sells cookware. Id. Lee provides promotional services for those products but does not engage in the manufacturing or selling of them. Id. Therefore, the integral part of business factor likely favors independent contractor status.

7. **Total Economic Reality**

The seventh issue is whether, as a matter of economic reality, Lee is dependent on K+C. Total economic reality "does not concern whether the workers at issue depend on the money they earn for obtaining the necessities of life." Donovan, 757 F.2d at 1385. Rather, courts consider whether workers are "'dependent on a particular business or organization for their continued employment,' or whether the workers are in a position to offer their services to other different businesses." Adami, 2016 WL 1241798, at *10.

For example, in Donovan, a telemarketing company that sold magazine renewal subscriptions relied on home researchers to locate subscribers' phone numbers. Donovan, 757 F.2d at 1385. The court held that the researchers were economically dependent on the company, favoring employee status. Id. The court reasoned that the researchers worked for the telemarketing company on a continuous basis, could not offer their research services to other businesses, and could work only when the company provided them with subscribers' phone numbers to research. Id.

Like how the researchers in Donovan worked for the company on a continuous basis, Lee has worked for K+C continuously for four years. See Donovan, 757 F.2d at 1385; R. 2. K+C prohibits Lee from mentioning or promoting any competitor, making her unable to offer her promotional services to other cookware businesses. R. 9. Lee's ability to perform her work depends on K+C, as the Agreement requires every post to display or refer to K+C products. R. 5.

Although Lee received an advance for her cookbook and is opening a restaurant, she relies on K+C for continued employment as a brand ambassador and social media influencer. R. 3. Therefore, as a matter of economic reality, Lee is dependent on K+C, favoring employee status.

Overall, right to control, opportunity for profit or loss, special skills, permanence of working relationship, and total economic reality likely favor employee status. Investment in equipment and integral part of business likely favor independent contractor status. Accordingly, Lee would likely be considered an employee under the FMLA (as opposed to an independent contractor) and therefore eligible for 12-week unpaid leave from K+C.