

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**E.P.M., INC.,
APPELLANT**

vs.

**JOHN BUCKMAN,
RESPONDENT**

**DIVISION OF EMPLOYMENT SECURITY,
RESPONDENT**

DOCKET NUMBER WD70161(Consolidated with WD70162, WD70163, WD70164

DATE: NOVEMBER 24, 2009

Appeal from:

Labor and Industrial Relations Commission

Appellate Judges:

Division Two: Victor C. Howard, P.J., Joseph M. Ellis and Mark D. Pfeiffer, JJ.

Attorneys:

Earl F. Seitz, for Appellant

John Buckman, Respondent Pro-se

Larry R. Ruhlmann, for Respondent Division of Employment Security

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

E.P.M. INC., APPELLANT

v.

JOHN BUCKMAN, RESPONDENT

DIVISION OF EMPLOYMENT SECURITY, RESPONDENT

WD70161 (70162, 70163, 70164)

Labor and Industrial Relations Commission

Before Division Two Judges: Victor C. Howard, P.J., Joseph M. Ellis and Mark D. Pfeiffer, JJ.

E.P.M., Inc. appeals from four decisions of the Labor and Industrial Relations Commission ("the Commission"), all of which involve whether manufacturer's representatives for E.P.M. are employees or independent contractors of the company.

AFFIRMED.

Division Three holds:

- (1) The Commission's determination that John Buckman was an employee of E.P.M. is supported by sufficient and competent evidence where the record reflected that the parties' relationship had continued over an extended period of time, Buckman worked exclusively for E.P.M., E.P.M. provided Buckman with training, Buckman was paid on a monthly basis, either party could terminate the relationship at any time without consequence, E.P.M. directed Buckman to use business cards with the company name and logo to convey his relationship with the company to the general public, Buckman received mail and phone calls at the corporate office, E.P.M. limited the territory in which Buckman could perform his duties, E.P.M. told Buckman what type of customers to pursue and not pursue, E.P.M. decided whether to accept the customers, E.P.M. collected the money from the customers, E.P.M. had specific procedures and forms that Buckman was required to utilize, E.P.M. scheduled customer calls for Buckman, and all customer contacts had to be reported to E.P.M.
- (2) The Commission reasonably determined that the fact that the other manufacturer's representatives were working under contracts for hire was not enough to differentiate them from Buckman.

- (3) The Commission's determination that Buckman was discharged for reasons other than misconduct related to work was supported by sufficient competent evidence.
- (4) The Commission did not err in including Buckman's wages and benefits when calculating E.P.M.'s contribution rate under Missouri's employment security law since he was an employee of the company.

Opinion by Joseph M. Ellis, Judge

Date: November 24, 2009

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