

# Donovan v. dial america marketing, inc. assignment

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Dialectic Marketing, Inc. Is a telephone-marketing firm that operates in twenty states and maintains its principal place of business in Tenneco, New Jersey. A major aspect of Dialectic's business is the sale of magazine renewal subscriptions by telephone to persons whose subscriptions have expired or ready to run out. They located subscribers' phone numbers by employing In-house researchers who would find numbers by consulting telephone books and calling directory-assistance or operators.

The researcher would travel to Dealership's office In Tenneco and pick up cards, which contained the name and address of a subscriber whose telephone number was needed. They would write the numbers on the cards in a specified manner, and then return the completed cards to Dialectic's office. After properly completing the magazine expire cards, and the researcher were asked to sign a document labeled an " Independent Contractor's Agreement. Upon signing the agreement to do home-research work, a worker was given a box of 500 cards to be researched. The worker was expected to set up an appointment to return the cards nee week later.

Dialectic did not; require the home researchers to keep records of the hours that they worked. During the course of this program, six or seven of the home researchers acted as distributors for Dialectic, picking up and delivering the cards of other home researchers. In some cases, the distributors recruited new distributes and instructed them as to the proper method of completing the cards. Originally, Delmarva Instructed the distributors to require each of their researchers to sign the same Independent contractor's agreement that was given to he other home researchers and retained copies of these signed agreements.

Dialectic paid its home researchers five cents for every completed telephone- number card. At the same time, Dialectic was paying its in-house researchers the minimum-wage hourly rate. The piece rate paid to home researchers was eventually raised to seven cents and then to ten cents per card. Usually, one week after a home researcher had returned a group of cards; Dialectic would make payment to that researcher of a check equal to the piece rate times the number of cards completed. They made no deductions from these checks.

Distributors were paid a lump sum equivalent to one cent more than the going piece rate for every completed card they returned to Dialectic, regardless of whether the card had been completed by them or their distributives. Initially, Dialectic instructed the distributors to pay distributives the going piece rate and to keep the remaining one cent per card for themselves. Later, however, Dialectic gave no instructions as to the amount to be paid to distributives, allowing the distributors to negotiate their own piece rates. II.