

# Independent contractors can sue for race bias

Unlike employees, independent contractors can't sue under Title VII for alleged discrimination. But that doesn't mean they don't have legal options if they believe they've suffered race discrimination.

The 3rd Circuit Court of Appeals has just concluded that an old Civil War-era law still outlaws discrimination in contracting.

**Recent case:** Kimberly Brown, who is black, responded to a solicitation to work as an independent contractor selling Craftmatic adjustable beds.

She attended a two-day training session and signed an independent-contractor agreement to start as a commissioned salesperson. The agreement required her to provide her own tools, transportation and supplies and allowed her to negotiate prices. She would get leads from the company, but could also solicit her own customers.

Practically before the ink was dry on the agreement, Brown got into an argument with the sales manager. Brown allegedly refused to shake his hand, and the two then exchanged words, some of which were racial slurs—although it wasn't entirely clear who said what first. Brown was then told she couldn't represent the company.

She sued, alleging race discrimination under Title VII and Section 1981 of the Civil Rights Act. The court dismissed the Title VII claim. Title VII applies only to employees and it was clear Brown was to have been an independent contractor.

But the court said she could still sue under Section 1981, which dates from 1866, because that law says, "all persons shall have the same right ... to make and enforce contracts ... as is enjoyed by white citizens." The court reasoned that the independent-contractor agreement was such a contract.

Ultimately, the court ruled in favor of Craftmatic, concluding no race discrimination had occurred. (*Brown v. Craftmatic*, No. 08-2713, 3rd Cir., 2009)