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Court: Cable Installers Employees, Not Independent Contractors

By [Bill Pokorny](#) on October 10, 2011



A couple of weeks ago, [I wrote](#) about an initiative by the U.S. Department of Labor, IRS and various state agencies to launch a coordinated crack-down on employers who misclassify employees as independent contractors. Recently, a U.S. District Court in Ohio issued a ruling that nicely illustrates the problem of misclassification and the potential liabilities that employers can face as a result. [Solis v Cascom, Inc - .pdf](#)

In 2009, the U.S. Department of Labor filed a lawsuit against Cascom, Inc., a business that contracted with [Time-Warner Cable](#) to install residential cable services in Southwestern Ohio. Cascom's installation work was performed by cable installers, whom the company classified as independent contractors. The installers were paid by the job rather than by the hour, and did not receive overtime pay. The DOL alleged that the workers were in fact employees, and that Cascom violated the Fair Labor Standards Act by failing to pay required overtime and failing to maintain records of the installers' hours.

After a bench trial, the court ruled in favor of the DOL, holding that the installers were in fact employees entitled to overtime pay. The court noted that the following factors all supported its finding:

- The installers were employed for an indefinite period of time.
- They were not allowed to hire assistants without approval from Cascom.
- Before beginning work with the company, installers were required to complete an employment application.
- The installers were substantially controlled by Cascom throughout they day. Among other things, they were required to report in during a specified window of time to receive assignments, check with a dispatcher after each job, remain on the job until dismissed by Cascom, complete Cascom paperwork, follow Cascom's detailed instructions for installation methods and work practices; follow routes dictated by Cascom; and follow written orders an dinstructions from Cascom. Additionally, the workers' performance was subject to Cascom's quality review process, and their pay was subject to "back charges" for errors.

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- While the work performed by the installers was Cascom's core business, cable installation, Cascom had no admitted employees who performed this work.
- Cascom retained authority to cancel contracts with its installers without notice.
- The installers had no opportunity for profit or loss depending upon their managerial skill.
- Although the installers were required to purchase tools costing \$2,000 to \$5,000 and provide their own vehicle or lease one from Cascom, the court found that these investments were "at the low end" of what one would expect for someone starting an independent business.
- No special skills were required - some installers "went from jobs as simple as sales clerks to Cascom technicians with six weeks of Cascom training."

In a [news release](#), the DOL stated that it is seeking back wages in excess of \$800,000 plus an equal amount in liquidated damages. The court will hold a hearing on damages on November 22.

Employers can expect to see more of these lawsuits by both the DOL and private plaintiffs in the months and years to come. If your organization classifies workers as independent contractors, don't wait to get sued to find out if you are in compliance. Review your workers' status and take steps to either make sure that your independent contractor classifications are defensible or that your workers are reclassified as employees and paid in accordance with state and federal law.

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