

## If The Payroll Company Says It's An Employee ...

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I wrote [here](#) and [here](#) earlier this year about the importance of employers carefully reviewing who they consider to be an independent contractor so the employer avoids the various legal problems that can arise as misclassifying workers who should be employees as independent contractors. A recent [decision](#) from a federal court in Florida is another lesson in this. In *Rezendes v. Domenick's Blinds*, two workers – an installer and a seamstress – won summary judgment from the court in a wage/hour case that they should be considered as employees, not contractors as they had been, and compensated accordingly. (The employer's payroll company had recommended they be treated as employees, advice the employer disregarded, thus the title of this post.) Some of the key facts about these employees:

- The installer had access to a company vehicle, and both employees used company tools. When the seamstress spent money on equipment for work, she was reimbursed for it.
- The employers were paid on an hourly basis, and frequently worked overtime, but were not compensated for it.
- They were both subject to extensive control by the owner. The seamstress was required to work in the store, and the installer reported extensively on his work. He was actually ultimately terminated for failing to work his scheduling hours.

There are many different tests under various laws for determining employee versus contractor status, all of them “fact intensive” and multi-factored – i.e. there is no formula. But if somebody looks and feels like an employee, and lacks any independence from the employer that an independent businessperson might have, they probably are an employee. In short, employers should be sure they review with counsel that anybody classified as a contractor is correctly classified.

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