

NEW 11TH CIRCUIT DECISION CLARIFIES INDEPENDENT CONTRACTOR TEST: YOUR FIVE STEP COMPLIANCE PLAN

Insights

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Businesses operating in Alabama, Florida, and Georgia recently received much-needed clarity from the 11th Circuit Court of Appeals on how to determine whether their workers are independent contractors or employees – a distinction that can have major and costly legal repercussions. While independent contractors typically fall outside the scope of laws such as the Fair Labor Standards Act (FLSA) and various state employment statutes, there is no bright-line rule for determining who qualifies as an independent contractor in states within the 11th Circuit. But an October 16 ruling involving the classification status of insurance adjusters offers employers a clearer direction on the court's approach to the issue under federal wage law. Here's what you need to know about the decision and five steps your business can take in response.

What Do Employers Need to Know?

The classification of a worker as an employee or an independent contractor remains one of the most consequential — and complex — determinations for employers nationwide. Making the wrong call can expose businesses to significant liability under federal and state law, including unpaid wages, tax penalties, and exposure under workers' compensation and unemployment insurance laws.

In *Galarza v. One Call Claims, LLC*, the US Court of Appeals for the 11th Circuit found that a group of insurance adjusters seeking overtime pay were improperly classified as independent contractors under the FLSA.

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By applying the FLSA's six-factor "economic reality" test, the panel ultimately concluded that a jury could reasonably find that the insurance adjusters were employees and sent the case back to a lower court for reconsideration. The panel noted that when courts are attempting to determine employee status, they should consider all the relevant conditions of the job, with an eye toward the economic reality of the relationship and whether the workers are economically dependent on the employer.

What Does This Mean For My Business?

The *Galarza* decision underscores an increasing focus on the practical, actual conditions of the working relationship – like who sets the worker's schedule and who provides equipment to complete the job – rather than the language of a contract or nominal independence. Regardless of a contract or label, courts will look to what actually occurred between the parties and how the work was performed.

Employers should carefully review their relationships with independent contractors, particularly where the workers perform core business functions or are subject to significant control. Businesses should also take this opportunity to review their classification protocols, independent contractor agreements and operational practices.

The Six-Factor Economic Reality Test

The 11th Circuit decision reaffirmed that when employers attempt to determine whether a worker is an independent contractor or employee, no single factor in the working relationship is dispositive. And the economic reality of both parties – or the conditions of the job arrangement are actually applied in the course of the work – must also be considered.

The court noted that the factors used as part of this economic realities test are inexhaustive, and can even be set aside if the economic reality conflicts with the overall assessment of the factors. Here's how the traditional six factors could look in practice:

- **Control Over the Work**

Does your company maintain significant control over the worker's schedules, tasks, and performance, including approval of daily work and restrictions on outside employment?



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- **Opportunity for Profit or Loss**

Is the worker paid a fixed, non-negotiable day rate with opportunity to increase earnings through initiative or managerial skill? If compensation is tied solely to the company's payment structure and not the worker's business acumen, this factor can support employee status. On the other hand, if payments are separately negotiated by the worker on a per job basis, independent contractor status is supported.

- **Investment in Equipment or Materials**

Does your company provide necessary tools for the worker to perform the job and does the worker make minimal investment of their own? Demonstrated economic dependence on the company for supplies and materials can support employee status.

- **Skill Required and Opportunity for Profit and Loss**

Does level of skill enhance their ability to realize a profit or loss based on their output? If so, this factor can support independent contractor relationship where a company demonstrates its most skilled workers have a better opportunity to increase their profits.

- **Permanency of the Relationship**

Does the worker remain engaged in their position for extended periods despite a written contract? If so, this factor can support employee status where the economic reality demonstrates a prolonged job opportunity with one company. Also consider whether the worker solely works for your company, or if the worker is free to and actually does work for multiple entities.

- **Integral Part of the Business**

Is the worker central to the company's business operations? If so, this factor weighs strongly toward employee status.

Your Five-Step Compliance Plan

The 11th Circuit ruling serves as an ample reminder of the litigation risks employee misclassification can create. Employers should consider taking this opportunity to:

1. Audit Independent Contractor Agreements and Relationships

Review current independent contractor relationships to evaluate whether the workers are economically dependent on the business. If your agreements do not align with your operational practices, you should assess whether the actual economic realities of the work is akin to an at-will employee relationship. Ensure your written agreements accurately reflect the true nature of the relationship and avoid overreliance on “contractor” labels where workers are actually economically-dependent on the company.

2. Assess the Degree of Control

Assess the degree of control exercised over contractors, including scheduling, supervision, and approval processes. If your company sets a rigid work schedule for contractors, a court could determine this factor supports an employee relationship.

3. Identify Opportunities for Profit or Loss

Evaluate compensation structures to determine whether workers have genuine opportunities for profit or loss. If your contractors are being paid a flat day rate or hourly rate, your most skilled contractors will not have an opportunity for increased profits, supporting a finding of employee status.

4. Identify Your Core Business

Identify whether core business functions are being performed by contractors. Any roles integral to the company's operations may impact the economic reality of the working relationship.

5. Consult with Your Employment Counsel

Consult with your employment counsel before entering new independent contractor relationships or modifying existing arrangements to ensure compliance with the latest case law and requirements under the FLSA.

Conclusion

The 11th Circuit's decision in *Galarza* reinforces the importance of focusing on the *economic reality* of the working relationship. Contract labels and licensing credentials alone are insufficient. Employers operating in

Alabama, Florida, and Georgia should act now to ensure their worker classifications align with this evolving legal standard to mitigate risk and avoid costly misclassification claims.

For support, reach out to your Fisher Phillips attorney, the authors of this Insight, or another member of our [Wage and Hour Practice Group](#). We will continue to monitor all announcements regarding worker classification and will provide updates as warranted, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information and invitations to our webinars.