

Cleaning workers were employees, not independent contractors

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A Massachusetts federal judge has ruled that cleaning company Coverall North America Inc.'s contracts with its franchisees misclassify the workers as independent contractors, instead of employees, under state law.

In his March 23 ruling in *Awuah v. Coverall North America Inc.*, U.S. District Judge William Young granted the plaintiffs' motion for partial summary judgment on the misclassification claim.

The purported class action filed by eight named plaintiffs claimed that the company targeted immigrants who do not speak English as a first language and had difficulty understanding the company's legal documents. The franchisees paid \$6,000 to \$30,000, but Coverall did not provide the promised volume of cleaning work, the plaintiffs alleged.

The legal claims include breach of contract, misrepresentation, deceptive and unfair business practices and unjust enrichment. The lawsuit also claims the company misclassified franchisees as independent contractors. Since they are employees, the plaintiffs contend that the company is liable for minimum wage, overtime and wage law violations.

Young ruled that Coverall did not meet the second prong of the three-part test that defines independent contractors under the state's independent contractor statute, which was amended in 2004.

The test requires workers to provide services that are "independent, separate and distinct" from the employers' business.

Companies must comply with all three parts of the test in order to classify workers as independent contractors.

The other two tests require independent contractors to be "free from control and direction in connection with the performance of the service" and customarily engaged in the same trade, profession or occupation that they're doing contractually.

According to Young's ruling, the franchisees' contracts with Coverall require

franchisees to participate in mandatory training and wear specific uniforms. Coverall took care of all the billing and collections and deducted its fees before paying the franchisees. Before May 2009, franchisees could not be party to a customer's contract with Coverall unless the customer specifically requested such an arrangement.

"The undisputed facts establish that Coverall sells cleaning services, the same services provided by these plaintiffs," Young wrote. "Because the franchisees did not perform services outside the usual course of Coverall's business, Coverall fails to establish that the franchisees are independent contractors."

The ruling follows several Massachusetts state court rulings during the past year, said one of the plaintiffs' lawyers on the case, Shannon Liss-Riordan of Boston's Lichten & Liss-Riordan.

The Coverall plaintiffs essentially paid thousands of dollars for a low-paying job, not to buy a true franchise, said Liss-Riordan.

"Coverall is a commercial cleaning company and the workers perform commercial cleaning work," Liss-Riordan said. "That made them employees. [The ruling] is significant because it's yet another decision saying that the court should not ignore the obvious. The defendants in these cases are trying to claim [the workers are] something that they're not."

Jacqueline Vlaming, Coverall's senior vice president and general counsel, said the ruling wasn't unexpected because Massachusetts has one of the strictest misclassification statutes in the country. She said that the company was assessing its legal options.

Franchise companies that do not own and operate franchise units will not be able to get past the statute, she said.

"They can't satisfy the [statute's] second prong that requires the person providing the service be in a different business than the franchiser," Vlaming said.

Michael Vhay, a Boston partner and litigator at DLA Piper who helped represent Coverall in the case, said Coverall "shares the International Franchise Association's concerns about the scope of the ruling."

In a written statement on Monday, the franchise association said that Young's ruling wrongfully defines the franchisees as Coverall's employees instead of business owners. "[This] threatens the viability of franchising as a business model in Massachusetts and will likely lead to franchise companies ceasing operations," said association Vice President for Government Relations

David French.

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