

# Man sues RCN for 'abuse' of contract workers

By Donna Goodison | Tuesday, June 2, 2009



Former cable installer Fritz Elienberg is suing RCN Corp. for what he claims is his due: unpaid overtime, insurance benefits, compensation for medical bills for an on-the-job injury and expenses for using his own vehicle and tools.

The Roxbury man filed a proposed class-action lawsuit against the broadband company yesterday, claiming it misclassified him and as many as 1,000 other U.S. installers as "independent contractors" so it could deprive them of overtime and other benefits.

From 2005 until February, Elienberg was employed as an "independent contractor" in Massachusetts by Pennsylvania-based Custom Cable Concepts, which provided installation work solely for RCN, according to his lawsuit filed in U.S. District Court in Boston yesterday.

"I always considered myself an RCN employee, because I was always under the control of RCN," said Elienberg, who was fired and remains unemployed. "RCN told me when to come to work. When they classify you as independent contractor, you're like a pawn. They can abuse you. This industry needs some regulation."

The lawsuit alleges that RCN, RCN Telecom Services of Massachusetts and Custom Cable Concepts violated the federal Fair Labor Standards Act and Massachusetts' independent contractor and overtime laws.

Herndon, Va.-based RCN, which provides cable TV, phone and Internet services in Boston and 16 other Bay State communities, did not return calls for comment.

Many U.S. businesses are realizing great savings by illegally characterizing workers as independent contractors rather than employees, said Harold Lichten, Elienberg's attorney.

"This is really becoming an epidemic," he said. "Companies are using this independent contractor sham to avoid paying (overtime), unemployment taxes, payroll taxes, Social Security taxes and workers compensation."

Elienberg worked six days and as many as 70 hours a week, Lichten said. "If in fact he was an employee as we claim, he would be entitled to thousands of dollars of overtime, and then that would be tripled by the court," he said.

Massachusetts last year became the first state to mandate triple damages to successful plaintiffs in wage-and-hour cases.