

Use of Non-Competes Cited as Factor Against Independent Contractor Status

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Requiring independent contractors to sign non-competes may contribute to a finding that they were misclassified employees entitled to overtime, according to a decision from the Northern District of Illinois. In

, No. 11-C-07485 (N.D. Ill. July 14, 2014), the court granted a motion for summary judgment by the U.S. Department of Labor alleging that Super Maid violated the **Fair Labor Standards Act (FLSA)** by treating its maids as independent contractors. The court entered judgment against the defendants in the amount of \$184,505.26 and issued an injunction prohibiting defendants from violating the FLSA in the future.

In analyzing the facts of the case, the Court highlighted the fact that applicants for jobs with Super Maid were required to sign a three-year non-compete prohibiting them from accepting direct employment with any of Super Maid's customers. The maids were told that this meant they could not work for another maid service. Citing a previous decision also involving the alleged mis-classification of maids, the Court noted that the notion that employers could designate maids as independent contractors – who would normally be free to utilize their skills in an open market – while simultaneously restricting that very ability with a non-compete, had been rejected. The Court did not rely solely on this issue, and applied a multi-factor test to determine that the maids should be classified as employees, but the decision shows the potential risk involved when requiring independent contractors to sign non-competes.

Restrictive covenants are not necessarily per se prohibited between a company and an independent contractor, depending, of course, on the state law in question and the nature of the relationship. There may be many circumstances where a contract with restrictions on competition or soliciting clients may be appropriate, and enforceable. But when a large workforce is involved, and the other factors create a close call as to classification, companies should be wary.

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