

## Increased Litigation Of Worker Misclassification Cases Should Place Employers On Notice Of Potential FLSA Violations

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Worker misclassification violations under the Fair Labor Standards Act (FLSA) continue to be at the forefront of the U.S. Department of Labor's (DOL) enforcement priority list and of the plaintiffs' bar, which has filed lawsuits on behalf of workers who are allegedly misclassified as non-employees (i.e., independent contractors) or as exempt from overtime compensation. Two recent cases highlight the need for employers to review their workforce in order to prevent or mitigate potential damages resulting from such lawsuits and DOL investigations. In *Arunin v. Oasis Chicago, Inc.*, a federal judge in the Northern District of Illinois held that delivery drivers for a company that operates restaurants in the Chicago area are entitled to unpaid wages because they were misclassified as independent contractors under the FLSA and Illinois Minimum Wage Law. Even though the workers maintained and drove their own vehicles, the court determined that the workers qualified as employees, rather than independent contractors, under the six-factor test utilized by the courts for analyzing employee status. Specifically, the court held that the company concluded the tasks to be performed, set schedules and payment, withheld tax obligations from credit card tips, and had the right to control the plaintiffs' work by requiring them to perform additional work for the restaurants, in addition to delivering food. Also, in *Snodgrass v. Bob Evans Farms, LLC*, a case from the Southern District of Ohio, Bob Evans agreed to settle a case involving allegations of worker misclassification for \$16.5 million. The plaintiff class, comprised of 1,566 assistant restaurant

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managers, claimed that they performed manual tasks, such as cooking, washing dishes, and running the cash register, instead of overseeing other employees. By not performing “supervisory” tasks, the plaintiffs alleged that they were owed overtime because they did not meet an exemption from overtime criteria under the FLSA. These two cases should place employers on notice that worker misclassification litigation and enforcement is prevalent and costly and deserves every employer’s attention.