



Security Guards Misclassified As Independent Contractors

By [Bill Pokorny](#) on June 01, 2011



On May 24, 2011, a federal district court in Chicago ruled that security guards who were licensed, insured, trained, and paid by the hour by a private security company were not independent contractors, but employees entitled to overtime pay under the Fair Labor Standards Act. [Solis v. International Detective & Protective Service, Ltd.](#)

Granting summary judgment for the Department of Labor, U.S. District Judge Virginia Kendall found that the security guards were owed a total of \$101,577.60 in unpaid overtime, plus the same amount in liquidated damages.

While the case does not break much new legal ground, it does offer some useful reminders about what not to do if you want your workers to be treated as independent contractors. To borrow a form from a certain [well-known comedian](#):

Your security guards might be employees (not independent contractors) if:

1. You provide them with a list of "Policies and Procedures," a memo instructing them on who to notify in the event of emergency, the order of patrols, what to include in written reports, and how to properly check their equipment, and similar directions on how to perform their jobs.
2. You organize your guards in a "chain of command" with titles similar to those of a police organization (officer, sergeant, lieutenant, etc.)

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3. You provide key equipment like badges, mobile phones, cameras, vehicles with your company logo, and reimburse them for gas and expenses.
4. Instead of requiring them to obtain their own security guard licenses and firearm authorization cards, you arrange for them to be licensed as employees of your firm.
5. You pay them an hourly wage and reimburse their expenses, with no opportunity for them to share in the profit or loss of the business.
6. You employ the guards on an ongoing, at-will basis.
7. You operate a security firm - meaning that security guards are obviously an integral part of your business.

The bottom line is that if you treat your "independent contractors" as employees for all but payroll purposes, the last laugh will belong to the plaintiffs' lawyers who gleefully sue you for unpaid overtime.

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