

# Legal Connections



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## EMPLOYEE MISCLASSIFICATION: A CAUTIONARY TALE

While there continues to be confusion regarding the distinctions between an employee and an independent contractor, under the federal Fair Labor Standards Act (FLSA), one Ohio judge recently found no confusion in determining an employer had misclassified employees as volunteers. In *Hugler v. Cathedral Buffet, Inc.* (Case No. 5:15-cv-1577), Judge Benita Pearson of the Northern District of Ohio determined that televangelist Ernest Angley employed unpaid volunteers in the church's for-profit buffet restaurant, appropriately named the Cathedral Buffet.



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In the years following the DOL's investigation, and knowing that Cathedral Buffet was on the federal government's radar, Reverend Angley was alleged to have issued paychecks to "volunteers," who then signed the paychecks and handed them back over to the church secretary. This practice eventually stopped, and by 2014, Reverend Angley publicly admitted that he had reverted to his old method of not paying volunteers. Not surprisingly, this prompted another DOL investigation.

Judge Pearson had little difficulty in determining that the volunteers were misclassified, and instead served as employees of the Buffet. "The economic realities of the situation in the case at bar suggest that the volunteers used by the Buffet were actually employees, and that the Buffet's main purpose in using the volunteers was to save money."

Because individuals can be held personally liable under the FLSA, Judge Pearson ordered Reverend Angley and the Cathedral Buffet to pay employees nearly \$400,000 in damages, split between unpaid wages and liquidated damages. Shortly after Judge Pearson's decision was released, the Cathedral Buffet closed its doors, claiming that it could not maintain its low, family-

friendly prices without the use of volunteers. Speaking of the DOL, it made headlines on June 7, when it cancelled two controversial Obama-era guidance memos: one seeking to curb the misclassification of employees as independent contractors and another broadening liability for joint employment. Many observers believe this signals a shift toward diminished enforcement of employee classification issues under the current administration. With these memos now cancelled, the DOL will presumably revert

EMPLOYEE vs. Independent Contractor	
Paid hourly or by salary	Paid upon completion of project
Uses employer's materials, tools and equipment	Provides own materials
Typically works for one employer	Works for multiple clients
Continuing relationship (at will or a defined term)	Temporary relationship (until project complete)
Employer decides manner and means of performing	Contractor decides manner and means of performing
Employer determines work performed	Contractor and client agree to project scope

to the more traditional test of who is an employee versus an independent contractor by focusing on the level of control exercised over the "employee."

### Practical Impacts on Business Owners

The appropriate classification of employees is crucial to business owners, as there are ramifications under many employment discrimination laws, including but not limited to the FLSA, ERISA, unemployment compensation law, workers' compensation regulations and tax laws. Use care when classifying, lest yours become the next cautionary tale. ■

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## LEAN SIX SIGMA AT YOUR FIRM: INVENTORY

Did our last segment of this series on transportation get you thinking about your paper files and how to reduce the amount of paper you generate or keep? I hope it did, and that you are thinking about ways to continually improve when it comes to paper reduction. This week, we will explore the waste of INVENTORY. You are probably thinking this one won't apply to you, after all, you don't have any inventory. But keep on reading...

In a law firm, your inventory is time, advice, drafted documents, answered emails, returned phone calls, research, consultations, attending hearings, etc. So, how many emails are in your inbox that

need to be answered so you can work on solving a client's problem? How many tasks are on your to-do list related to billable work for a client? How many documents are waiting to be reviewed/drafted for a client? All of that work is your inventory. The quicker you move your inventory, the quicker the client gets billed, or the case moves toward settlement, and the quicker you get paid.

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utilization. If your lawyers are in the office eight hours a day, are they "moving inventory" for most of that time? In other words, are they working as efficiently as they could or is the inventory piling up?

You might also identify excess inventory by identifying and exploring the bottlenecks in your firm. Where does inventory go to rest or wait to be sold? Start there, and keep on looking for practical ways to get people working smarter and to keep the inventory efficiently flowing. It helps with client satisfaction, too!

Next up, MOTION. ■



### July is Law & History Month @ the CBA

To coincide with Independence Day, all of our classes during the month of July will explore America's rich history of laws and politics.

The Lincoln Colloquium • January 1973 • The Harding Affair  
Ulysses S. Grant • MLK, Jr. Symposium • Intro to Immigration

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