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Contractors cry foul over benefit-excluding system

By Ivan Penn, Times Staff Writer
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Independent contractor or full-time employee?

Increasingly, workers want the courts to decide the answer to that question as businesses increase demands on those they outsource work to.

Trouble is, if businesses want to increase requirements of the contractors — essentially treating them like full-time employees — then workers say they want the benefits of being a part of the company.

The latest volley between contractor and corporate emerged in a lawsuit against [Knight Enterprises Inc.](#), a Clearwater firm that provides independent contractors for the cable company's installation services. The plaintiffs in the case want a class action and reclassification of independent contractors as employees, which they estimate at 300 to 500 people.

Lead plaintiff Michael Scantland contacted a Boston law firm that fed a nationwide trend when it filed suit against FedEx for its handling of independent ground transportation drivers. The law firm, [Lichten & Liss-Riordan P.C.](#), seemed a good fit to Scantland, because it already scored points for workers in [its battle with FedEx](#), though the case continues to work its way through the courts.

With the move toward outsourcing jobs developing over the past decade and a troubled economy shrinking the work force, demands on contract employees could do little else but increase.

For the installers, the contract relationship has meant they have to buy their own tools and vehicles; work long hours without overtime pay; no health benefits; no [Social Security](#) or [Medicare](#) contributions; no workers' compensation; no retirement.

And an almost scripted response inevitably ensued: Compensate me for your demands.

"It's not even a livable type of job," Scantland now says, after he stopped working as an installer for Bright House through Knight Enterprises in May, after seven years. "Most guys don't even make a few hundred dollars, not even \$500 a week."

Scantland says top installers can earn as much as \$1,000 to \$1,500 a week. But he said that kind of money is difficult to achieve.

Joe Durkin, a spokesman for Bright House, said the company declined to comment at this time because of the pending litigation.

Representatives for Knight Enterprises say they will show that their business model is sound and the litigation is groundless.

Scantland's lawyers, Boston-based [Harold Lichten](#) and Clearwater-based Jim Staack, said they hope the case will change the independent contractor business model. Lichten brought a similar case against FedEx for its handling of independent ground transportation workers and Comcast for its independent installers. He said use of the independent contractors saves a business as much as 30 percent on employee costs, allowing it to undercut competition.

"When you use this independent contractor model, which we say is a sham ... you avoid federal and state income taxes, health insurance, Social Security," Lichten said. "It's quite the grand scheme."

Scantland, 34, of St. Petersburg began working as an independent contractor for Bright House in February 2002. He received his job assignments Knight Enterprises.

Knight and a handful of other companies organize pools of independent contractors for Bright House.

The contractors provide the installation services in customers' homes.

Scantland, a father of three and now engaged to be married, said he first had to buy his equipment just to begin working for the company.

That equipment included a \$2,200 meter that helps determine if a cable jack is good and functioning; a \$500 phone installation kit; and \$200 wire strippers.

Knight Enterprises supplied the equipment and deducted the costs from his initial paychecks at about \$300 to \$400 a week, leaving him little.

Scantland's gross pay peaked in 2007 at \$77,000, out of which he had to pay for all expenses related to his work, such as mileage, vehicle repairs and equipment. The expenses reduced his adjusted income to about \$28,000 — an amount that qualified his family for Medicaid, he said.

Still, that wasn't so bad, until he fell off a ladder in February 2008 and hurt his back.

"I told my manager I fell off a ladder," Scantland said. "He said, 'Oh, well. You're an independent contractor. Suck it up!' "

Finally, Bright House began requiring drug tests and background checks on independent contractors — understandable since the installers would be going into customers' homes. But again, another demand from corporate on workers who did not have the benefits of being an actual employee.

"Over the past two years, I really started to look for other avenues of employment," Scantland said. He said he was considered for a full-time position at Bright House, but after he was all but assured the job, he was told he wouldn't get it.

"I just feel that this company has done me and my family wrong," Scantland said.

Ricard Roig, a Tampa lawyer and counsel for Knight Enterprises, said Scantland was well-compensated for his work.

"You can't look at someone and say you made almost \$80,000 a year and you aren't being adequately compensated for the work being performed," Roig said.

Roig said Knight Enterprises has been in business for some 20 years and has been using the independent contractor model all that time. He said even one of the plaintiffs in the case has used independent contractors.

"Knight's position has consistently been validated," Roig said. Although there is a request for a class action against Knight Enterprises and Bright House, Roig said he does not believe the issue warrants a class action for a few contractors who are in dispute with the company.

In September, Scantland contacted Lichten's firm and decided to sue Bright House and Knight Enterprises.

Lichten, Scantland's lawyer, said some companies play fair. In the case of the cable installers, Lichten said [Verizon](#) uses its own employees. And for ground transportation, the [United Parcel Service](#) uses its own employees, he said.

"UPS does it correctly," Lichten said. "Verizon, they play by the rules."

Verizon prides itself on use of employees as installers.

"We accept that disadvantage in the interest of the quality of our technicians and in the quality of the experience our customers receive," said Bob Elek, a spokesman for Verizon. Verizon employees "are bargained-for employees. They work underneath a union contract."

Scantland continues to work as an independent contractor for the new job he recently started, providing networking services for computers and phone installation. But unlike working for Knight Enterprises and Bright House, he said he is truly independent.

"I'm hoping this will change things," Scantland said. "I'm just glad I'm not there anymore."

Times researcher Shirl Kennedy contributed to this report. Ivan Penn can be reached at ipenn@sptimes.com or (727) 892-2332.