

Mich. Cable Installers Are Employees Under FLSA, Judge Says

By **Vin Gurrieri**

Law360 (October 2, 2018, 5:08 PM EDT) -- A group of LeCom Communications Inc. cable television installers qualifies as employees under the Fair Labor Standards Act and can seek damages from the company for allegedly stiffing them on overtime by misclassifying them as independent contractors, a Michigan federal judge has ruled.

U.S. District Judge David M. Lawson on Sunday awarded partial summary judgment to the cable installers, also referred to as technicians, on the issue of their employment status, finding that they can hold Michigan-based LeCom Communications Inc. liable for alleged FLSA violations. LeCom contracted with Comcast Inc. to provide the latter's customers with cable installation and service.

In looking at a variety of factors surrounding the installers' working conditions, the judge concluded in part that the evidence "overwhelmingly establishes" that LeCom "controlled every aspect" of how the installers got assignments and the way they did their work.

"Applying the relevant factors to the undisputed facts, it is clear that the plaintiffs were employees of LeCom Communications," the judge said. "No reasonable jury could conclude otherwise."

As part of the ruling, which cleared out six pending summary judgment motions from various parties, the judge also dismissed LeCom Inc. from the case, saying it is a wholly different entity than LeCom Communications and "was not involved in an employment capacity as to any of the cable installers." The judge further rejected the installers' contention that the two entities functioned as joint employers and kept alive claims against individual named defendants Joseph Lentine and Jeffrey Gendron.

Initially filed in 2015 by named plaintiff Harry Benion and three others, the suit was conditionally certified as a collective action soon after.

An April 2017 amended complaint alleged generally that to be hired by LeCom Communications, the technicians were required to contract with one of a handful of subcontractors that LeCom controlled and that the company illegally failed to pay them time-and-a-half for hours they worked over 40 in a week.

"Although LeCom classifies these technicians as 'independent contractors,' the nature of the services they perform and the manner in which they perform these services make it clear that they are actually employees or joint employees of LeCom and are dependent on LeCom for their livelihood," the amended complaint said.

LeCom Communications, however, argued in an October 2017 response to the plaintiffs' summary judgment motion that the technicians were free to work elsewhere and that they each signed independent contractor agreements with LeCom's subcontractors, among other arguments.

But in his ruling, Judge Lawson rejected LeCom's arguments and found instead that the technicians qualify as LeCom employees.

In reaching that conclusion, the judge highlighted a variety of factors that most weigh in the

workers' favor to show they were "economically dependent" on LeCom and not in business for themselves.

Those factors included being given a list of service calls by LeCom that had to be completed in a workday, including set times for completing them. The installers also couldn't refuse assignments, had to be "cleared" by supervisors to be done for the day, were regularly denied time off, and couldn't negotiate the pay they earned, the ruling said.

The workers also had no control over their schedule and little time or opportunity to pursue outside work since they were regularly required to work between 60 and 90 hours per week, Judge Lawson said, noting as well that the technicians had to wear uniforms that identified them as representatives of Comcast and LeCom, were issued Comcast identification badges, and had the Comcast logo emblazoned on their vehicles.

"Furthermore, it is undisputed that LeCom Communications would deduct the plaintiffs' pay when it found their work to be unsatisfactory or equipment went missing — the familiar 'charge back' practice that courts have found weighs in favor of employee status," the judge said

Plaintiffs' counsel Harold Lichten of Lichten & Liss-Riordan PC told Law360 Tuesday that the technicians are pleased with the decision, saying the ruling "provides a detailed and comprehensive roadmap as to how plaintiffs and their counsel can establish misclassification under the economic realities test."

"In his 50-page opinion, Judge Lawson granted summary judgement to the plaintiffs finding that the named and opt in plaintiffs were misclassified as independent contractors, and were really employees under the economic realities test of the FLSA," he said. "Therefore, they were unlawfully deprived of overtime. The amount of damages they are owed, and whether the owner and general manager of the company can be held individually liable, must be decided at trial."

Counsel for LeCom was not immediately available for comment Tuesday.

The plaintiffs are represented by Harold Lichten of Lichten & Liss-Riordan PC and David M. Blanchard and Frances J. Hollander of Blanchard & Walker PLLC.

LeCom and Lentine are represented by James R. Andary of Andary Andary Davis & Andary and Seth D. Matus of Matus Law Office PC. Gendron is represented by Robert Charles Davis.

The case is Harry Benion et al. v. LeCom Inc. et al., case number 2:15-cv-14367, in the U.S. District Court for the District of Michigan.

--Editing by John Campbell.