



# Corporate Entity Formation Is Not Dispositive on “Employee” Status Under the FLSA

OCTOBER 22, 2018 | PUBLICATIONS

The Tenth Circuit Court of Appeals recently provided an important reminder to employers about the pitfalls that can occur when attempting to determine whether workers are employees or independent contractors. The court held that individual workers who personally perform janitorial cleaning services could be found to be employees under the Fair Labor Standards Act (“FLSA”), *even if* those workers have formed corporate entities and entered into franchise agreements with a franchisor. See *Acosta v. Jani-King of Okla., Inc.*, Case No. 17-6179, 2018 WL 4762748 (10th Cir. Oct. 3, 2018). The holding in *Jani-King* emphasizes the principle that forms and labels are not the deciding factor in determining whether a worker is considered an “employee” for FLSA purposes. Under current law, administrative agencies and/or the courts will make a determination as to “employee” status under the FLSA by examining the totality of the circumstances in light of the factors stated in the “economic realities test.”

## FACTS OF JANI-KING

The *Jani-King* case involved a janitorial company that provides cleaning services in the Oklahoma City area. The company operates by contracting with individuals or groups to perform janitorial services. Jani-King required all workers to form a corporate entity, so that every individual worker or group of workers would be employed by a corporate entity that the worker(s) owned and controlled. That corporate entity would enter into the franchise agreement with Jani-King.

Jani-King was investigated and subsequently sued by the Department of Labor (“DOL”) for failure to maintain proper wage and hour records as required by the FLSA. The DOL asserted that, even though the janitorial workers formed separate and distinct corporate entities and Jani-King had no ownership interest in or control over those corporate entities, the janitorial workers nonetheless were personally performing work on behalf of Jani-King and qualified as its employees for FLSA purposes based upon the “economic realities” of the relationship.

## HOLDING: CONTRACTUAL AND/OR CORPORATE LABELS ARE NOT DISPOSITIVE

Jani-King argued that the lawsuit should be dismissed because the DOL was not free to ignore the corporate organization of the franchisees. The district court agreed with Jani-King and dismissed the DOL’s lawsuit. Specifically, the district court concluded that “the complaint failed to state a claim because a corporate entity can never be an individual, which is a statutory prerequisite to status as an ‘employee’ [under the FLSA].” *Id.* at \*2. On appeal, the Tenth Circuit rejected the district court’s holding because it “improperly ignores the economic realities test.” Rather, the 10<sup>th</sup> Circuit pointed out that the “economic realities of an individual’s working relationship with the employer—not necessarily the label or structure overlaying the relationship—determine whether the individual is an employee under the FLSA.” *Id.* at \*2.

## KEY TAKEAWAYS

1. “Employee” status for FLSA purposes is determined by analyzing the totality of the circumstances in light of the economic realities factors.
2. Although they may be used as evidence to support a finding that a worker is an independent contractor rather than an employee, corporate entity formation and/or independent contractor agreements are never dispositive as to a worker’s status as an “employee” for FLSA purposes.
3. If there is any doubt as to whether a group of workers that perform services with or on behalf of a company qualify as employees, then the most prudent course is to seek the advice of competent legal counsel.

This article was written by [Brian Peterson](#). He is an Associate in Spencer Fane’s Kansas City Office. For more information, please visit [www.spencerfane.com](http://www.spencerfane.com).

## AUTHORS

- [Brian Peterson](#)

## RELATED ATTORNEYS

- [Jamie N. Cotter](#)
- [Denise M. Delcore](#)
- [George S. Freedman](#)
- [Helen Holden](#)
- [Francis X. Neuner, Jr.](#)
- [Paul D. Satterwhite](#)
- [David L. Wing](#)

## RELATED PRACTICES

- [Labor and Employment](#)

## BLOG TOPICS

- [Human Resource Solutions](#)