



Robert W. Wood THE TAX LAWYER

TAXES | 9/06/2013

\$32M Domino's Delivery Verdict Says You Should Know Who's Delivering Your Pizza

A Texas jury slapped Domino's Pizza with a \$32M verdict over a pizza delivery accident that killed a 65 year-old woman and left her 70 year-old husband with permanent brain injuries. See [Texas family awarded \\$32M in suit against Domino's](#). The couple were Christian missionaries for 20 years. The car had worn tires and the driver was speeding. The driver was liable, as was the local independent franchise store that sold the pizza.



But was Domino's as the franchisor also responsible? The driver was speeding to meet Domino's 30-minute delivery policy, and the jury found Domino's liable. Domino's says it will appeal the verdict, which raises fundamental questions about worker status and agency.

Delivery work is often done by independent contractors, not employees. Independent contractor arrangements can be perfectly genuine or can be independent in name only, with no chance of standing up against the IRS,

worker's comp or other authorities. And such classification battles are increasingly common.

Names and contracts don't tell the whole story. Even if a driver is labeled an "independent contractor," an injured party can ask the court to find whether the driver was really an employee. That would make the employer liable as well. In franchise operations like Domino's, where each store is independently owned, the relationship can be even more attenuated.

The facts and circumstances matter, and not all cases come out the same way. In [*Viado v. Domino's Pizza, LLC*](#), the court said a franchisor like Domino's *can* be responsible for the conduct of a franchisee's employee in some cases. Usually, an agency requires a principal and agent like an employer and employee.

That's one reason if a company hires an independent contractor delivery driver and the driver has an accident, the company will probably be sued too. If the plaintiff can show that the driver was **really** an employee, the company has liability too. A franchise operation like Domino's dilutes this even further.

Of course, there is always some franchisor control over franchisees. However, if a franchisor's rules dilute a franchisee's control over day-to-day operation and over its own employees, the franchisor may be liable for the acts of a franchisee's employees. See [Can Franchisees Be Recast as Employees?](#)

We all know the basics of being an independent contractor. After all, being an employee means the employer withholds income, Social Security and Medicare taxes. The employer issues a [Form W-2](#) showing the taxes withheld from the pay. See [Independent Contractor Or Employee: Why It Matters](#). For an independent contractor, there is no tax withholding and the company just issues an IRS [Form 1099-MISC](#).

From an employer's viewpoint, paying independent contractors offers the benefits of:

- No income tax withholding;
- No employment taxes;
- No liability for acts of employees—like driving a car on company business;
- No federal and state discrimination laws covering only employees; and
- No fringe benefit, pension, retirement, or other plans.

Many worker status cases look primarily at:

- The employer's degree of control over the worker;
- The worker's opportunity for profit or loss;
- The worker's investment in facilities;
- The worker's skill set; and
- How long-term the relationship is.

Most of the discussion is about how to tell independent contractors from employees. There is little discussion about what it means if workers are **reclassified** from independent contractors to employees. There may be big liabilities for failure to withhold taxes, plus penalties and interest. And there also can be huge liabilities over accidents.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.