

# Are those employees similarly situated? Not if they're acting like free agents

A federal court has rejected a bid by two former employees to represent other similarly situated employees, based on the employer's claim of conflict of interest. The court agreed that these particular employees weren't the best choice to represent other workers.

**Recent case:** Joyce Graham and Joyce Lamkin worked for Overland Solutions as field auditors, traveling from work site to work site to audit insurance policy premiums.

Both women sued, alleging that Overland paid them and other field auditors only for the hours that could be billed to clients and not for other unbillable work. The two sought to represent all field auditors in a class action.

Overland discovered that Graham and Lamkin performed other audits at the same time they worked for Overland, sometimes even conducting the same audits for competitors. Overland said this disqualified them from fairly representing other auditors.

The court agreed the women had "unclean hands" and couldn't effectively represent other Overland auditors. (*Graham, et al., v. Overland Solutions*, No. 10-CV-672, SD CA, 2011)

**Final note:** Remember that most employees are entitled to pay for all work done for the company's benefit.

If you have any questions about how to structure unusual job situations, ask an attorney for guidance. For example, it may be possible to structure jobs as independent contractor positions, especially if, as here, the workers could perform tasks for other companies, too.