**ANNOTATIONS AND COMMENTS**

The central issue in determining employee/independent contractor status is the hiring party’s right to control the manner and means by which the work is accomplished. *Garcia v. Copenhaver, Bell & Assocs., M.D.’s, P.A.*, 104 F.3d 1256, 1266 (11th Cir. 1997) (claim under the ADEA). Whether a person is an employee or an independent contractor is a question of fact for the jury. *Id.; see also Morrison v. Amway Corp.*, 323 F.3d 920, 926-28 (11th Cir. 2003) (claim under the FMLA).

In cases under the Fair Labor Standards Act, the Court of Appeals has applied an “economic realities” test under which persons are considered employees if they “are dependent upon the business to which they render service.” *Mednick v. Albert Enters., Inc.*, 508 F.2d 297, 299-300 (5th Cir. 1975); *Villareal v. Woodham*, 113 F.3d 202, 205 (11th Cir. 1997).

This instruction follows the Eleventh Circuit’s adoption of a standard that combines the “economic realities” test and the common law test. *Cuddeback v. Fla. Bd. of Educ.*, 381 F.3d 1230, 1234 (11th Cir. 2004) (claim under Title VII); *see also Wolf v. Coca-Cola Co.*, 200 F.3d 1337, 1340 (11th Cir. 2000) (the term “employee” as used in the ERISA statute refers to the common law analysis).