

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS

Middlesex, ss.

Michael Ivie, et al.,
Petitioners,

Docket No.: LB-24-0700

v.

Office of Attorney General, Fair Labor Division,
Respondent.

Appearances:

For Petitioners: Michael Ivie, pro se
For Respondent: Justin Polk, Esq.

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Petitioners owned an insulation company. Despite their claim that the complainants were independent contractors, they were instead employees. Moreover, the Petitioners did not pay them for several weeks of work. Finally, when asked to produce employment records to the Fair Labor Division, they failed to produce many documents responsive to the request. The various citations issued in response to this conduct are affirmed.

INTRODUCTION

The Petitioners timely appeal several citations issued by the Office of Attorney General, Fair Labor Division (“FLD”). On November 13, 2025, I conducted a virtual hearing. The FLD presented three witnesses: Sheilyn Gonzalez, an investigator, Alexander Rosario and Francis Rosario; Mr. Ivie testified on behalf of the Petitioners. I entered exhibits R1-R15 and P1-P3 into evidence. I also admitted into evidence some stipulations. At the hearing, Mr. Ivie indicated he

might have additional documents which he had not submitted but could be relevant. I left the record open to allow him to submit the documents for review. However, he did not submit any documents by the deadline I set, so I ordered the evidence closed on December 12, 2025.

Thereafter the parties submitted closing briefs on January 16, 2026 at which point I closed the administrative record.

FINDINGS OF FACT

Background

1. Energy Savers Insulation LLC (Energy Savers) is a Massachusetts company. Michael Ivie was its owner, manager, and resident agent. The company installed insulation and did other related work. (Stipulated facts.)
2. Prior to incorporating Energy Savers, Mr. Ivie co-owned a different insulation company called I & W Insulation (I & W). For all intents and purposes, both companies provided the same services. Many people who were working at I & W stayed on when it switched over. (Ivie.)
3. Alexander and Francisco Rosario¹ worked for Mr. Ivie both at I & W and Energy Savers. (Stipulated facts.)
4. The main difference between the two companies was ownership, which did not affect the workers. (Ivie.)
5. Another difference is that Mr. Ivie attempted to change the employment model from

¹ Because they are brothers and share a last name, I refer to them by their first names.

having employees to working with subcontractors. (Ivie.)

6. As part of that effort, he drafted subcontractor agreements. Both Alexander and Francisco signed them in January 2024. (P2 & P3.)

Rosario brothers' employment

7. Alexander and Francisco each explained their work and pay arrangements with the two companies. (Alexander; Francisco.)
8. When they started at I & W, Alexander and Francisco worked with about 25 other people; when the company switched to Energy Savers, there were fewer co-workers. But at both companies, all the workers did the same type of work. The brothers would rotate who they worked with, so they were aware of what other workers did.

(Alexander.)
9. At Energy Savers, they had a supervisor, Wilson Canterero. (Alexander; Francisco.)
10. At Energy Savers, they were given a schedule of the jobs for that day. They would usually get to the job sites using a company vehicle. Sometimes they had to be at multiple job sites in one day where they might need to use the company vehicle to get there. (Alexander; Francisco.)
11. Mr. Canterero or Mr. Ivie might text them during the day and assign them to a different job or task. For example, one text from Mr. Ivie asked Alexander: "After Northbridge, Can you drop Randi in Milford at #20 and pick up Francis at IDI then go back to Milford."

(Alexander; Ex. P14.)
12. They never rejected a job. (Alexander; Francisco.)

13. They worked every Monday to Friday, typically 7:00am to 5:00pm. They usually wore clothing provided by the company with a company logo. If there was a problem at the job site, they reported it to Mr. Canterero or Mr. Ivie. (Alexander; Francisco.)
14. They usually sent a picture or some other form of confirmation when they finished a job. (Alexander; Francisco.)
15. Alexander was offered paid vacation time. The policy was that, for his first three years of employment, he had one week of paid vacation (a year); after the first three years, he would have had two weeks paid vacation. (Alexander; Ex. P14.)
16. While working for Mr. Ivie's companies, neither Alexander nor Francisco contracted to do any other work. They worked exclusively with I &W and Energy Savers. (Alexander; Francisco.)
17. When they first started working at I & W, they would punch in and out to record their time. After the company switched over to Energy Savers, they would report their time by text message. (Alexander; Francisco.)
18. The subcontractor agreement with Energy Savers addressed compensation. It indicated they would be paid \$220.00/day. (Ex. P2.)
19. That means that if they worked five days a week, they would make \$1,100.00.
20. Alexander filed an on-line complaint with the FLD on August 19, 2024. He said his pay rate was \$230.00 a day and he was paid \$1,150.00 a week.²

² Although the subcontractor agreement said Alexander would be paid \$220.00 a day, it is possible Alexander was paid \$230.00 a day toward the end of his employment. But there is no

21. Although the form is ambiguous as to how much he was owed, Alexander credibly explained in his testimony he was owed three weeks of pay from July 29 through August 16, 2024. (Ex. R1.)
22. Specifically, the form said he was owed payment from August 5, 2024 to the present (August 19, 2024). But in his testimony, he explained he used the August 5th date because that is when he thought he was going to be paid for the prior week's work, which he was not. Alexander also speaks primarily Spanish and filled out the form in English on his own. I thus credit his testimony as more accurate, and not what he wrote on the form, because he was able to explain what he intended to fill out. (Alexander.)
23. Francisco filed an on-line complaint on August 26, 2024. He indicated he was paid \$1,100.00 a week and was owed payment from August 1, 2024 to the present (August 26, 2024). His testimony corroborated the amount he says he was normally paid. (Ex. R3.)
24. As to how many weeks he was owed, he explained he was actually owed three weeks' pay, which I understood to mean the same three weeks as Alexander.³ (Francisco.)

Requests for documents

evidence to corroborate that. If he were, that would mean he was owed \$3,450.00 for three week's pay. However, Investigator Gonzalez calculated that Mr. Ivie owed Alexander only \$3,100.00. (Gonzalez; Ex. P13.). Even at a rate of \$220.00, he would have been owed \$3,300.00 for three weeks of work. Because the FLD is seeking an amount less than three weeks' pay at either hourly rate, I need not resolve these inconsistencies.

³ The FLD only seeks restitution for two weeks pay for Francisco.

25. After having received the complaints, the FLD sent the Petitioners a letter requesting either payment of wages and a small fine or, alternatively, employment records for the brothers including pay and time records. (Ex. R4; Gonzalez.)
26. Mr. Ivie responded by e-mail. He attached the subcontractor agreements and the brothers' W2's and 1099 tax records from 2023. He added that "there are no payroll records, time sheets, or employment records considering they are not employees." (Ex. R6.)
27. The tax records were filled out and issued to Alexander and Francisco personally, not to a business or corporation. (Ex. R6.)
28. After it received more information, the FLD sent a formal document demand seeking documents such as time records, pay records, etc. for all employees of Energy Savers between August 2022 and September 2024. (Ex. R8; Gonzalez.)
29. Mr. Ivie responded almost identically to this demand. He again attached the subcontractor agreements. He added that "all documents requested are non applicable." (Ex. R9; Ivie.)
30. The FLD sent one final document demand after that seeking the same documents for the same time period. This time, however, it added I & W to the request. (Ex. 10.)
31. The Petitioners did not submit a response to this request. (Gonzalez.)
32. Mr. Ivie does not dispute that he did not submit any documents besides the subcontractor agreements and the tax information. (Ivie.)
33. He argues, in part, that he did not have documents responsive to this request because

Alexander and Francisco were independent contractors and thus would not generate, for example, time sheets. But he conceded there were many employees at I & W and at least one employee at Energy Savers. He did not explain why he failed to submit the requested records for those individuals. (Ivie.)

34. In the regular course of business, he should have kept some documents concerning Francisco's and Alexander's work. For example, the subcontractor agreements required the contractors (Alexander and Francis) to send weekly invoices to the client (Energy Savers). (Exs. P2 & P3.)

35. Mr. Ivie also testified that he did keep some records, though he was not sure if he still had them. He said he kept records of when Alexander and Francisco worked through a daily schedule and weekly schedule sheet. He also said he knew the last day he made payments to Alexander and Francisco because they signed a receipt of that payment. (Ivie.)⁴

36. I infer that, at the time the FLD requested records from the Petitioners, they had some responsive documents—either employee records for the people Mr. Ivie concedes were employees and/or invoices or schedules from Alexander and Francis. Accordingly, I find

⁴ Mr. Ivie explained that some of the documents were saved on a OneDrive but then he lost the computer that had the information. However, he said he was able to recover the information after the hearing process had begun. He also said he had since moved across country and was not sure where his work documents were. I gave Mr. Ivie time after the hearing to provide any documents he referenced in his testimony to the FLD, but he never did. To the extent it is relevant, I do not credit this testimony about why he did not have these documents available to produce to the FLD.

the Petitioners did not furnish these documents to the FLD as requested.

The citations

37. The FLD issued three citations. (Exs. 11-13.)

38. The first citation was for failure to furnish true and accurate payroll records without specific intent. It imposed a penalty of \$2,500.00. (Ex. 11.)

39. The second citation was for misclassification of employees (Alexander and Francisco) as independent contractors without specific intent. It imposed a penalty of \$3,000.00. (Ex. 12.)

40. The third citation was for failure to make timely payment of wages without specific intent. It imposed a penalty of \$1,500.00 and restitution in the amount of \$5,300.00. Of the restitution amount, \$3,100.00 was attributed to Alexander and \$2,200.00 was attributed to Francisco. (Ex. 13.)

DISCUSSION

A person aggrieved by a citation from the Attorney General may appeal it. *See* G.L. c. 149, § 27C(b)(4). If the Petitioner “demonstrates by a preponderance of evidence that the citation . . . was erroneously issued,” DALA may vacate or modify the citation as appropriate. *Ibid.* Otherwise, DALA must affirm the citation. *Ibid.*

1. Failure to furnish records

The Petitioners failed to furnish records to the FLD, other than the subcontractor agreements and some tax information for Alexander and Francisco. On the one hand, the Petitioners may not have kept all the documents the FLD sought, so that they could not produce what they did not have. But on the other hand, they did have other documents that would have been responsive and which they did not provide. The FLD requested many documents beyond

just some related to Francisco and Alexander, both for I & W and Energy Savers. Mr. Ivie admitted he had some of these documents and did not provide them. I do not credit his explanation as to why he was unable to furnish other documents.

2. Failure to make timely payment

The Petitioners do not dispute they owed Alexander and Francisco some money; they just dispute how many days the brothers claim they are owed. As to whether they made timely payment, if they agree they owe them money, that is an admission that they failed to timely pay the brothers.

As to the amount owed, Mr. Ivie relies on questions at the hearing that I asked Alexander and Francisco about some inconsistencies in their complaint forms. However, I credit Alexander and Francisco's testimony as to how many weeks they were not paid; their testimony credibly explained how long they worked without pay while also explaining why they filled out the complaint form the way they did. Thus, the Petitioners owe them the restitution amounts the FLD is seeking.⁵

3. Misclassification of employees as independent contractors

"Under General Laws chapters 149 and 151, 'an individual performing any service...shall be considered to be an employee.'" G.L. c. 149, §148B. *Freitas v. Office of Attorney General*, LB-25-0005, 2025 WL 2952469, (Div. Admin. L. App. October 8, 2025), *citing* G.L. c. 149, §148B.

However, there is an exception if three conditions are met:

⁵ As noted above in footnote 2, the restitution amount for Alexander is slightly less than what he says he was owed in his complaint. And as noted in footnote 3, the restitution amount for Francisco is for one week less than he testified he was owed.

- (1) the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and
- (2) the service is performed outside the usual course of the business of the employer; and,
- (3) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

G.L. c. 149, §148B(a); *Freitas, supra*.

Here, none of the conditions are met. First, the Rosario brothers were not free from the Petitioners' control. Rather, the Petitioners gave them a schedule every week, supervised them, and would dictate when and where they worked. Although the Petitioners argue the brothers were free to refuse a job, there is no evidence they ever did. Second, the services the Rosario brothers provided were the same services Energy Savers provided: installing insulation. Lastly, the Rosario brothers did not have their own independently established business. Nothing they did as insulators was independent of Energy Savers. On the contrary, they were entirely dependent on Energy Savers employing them.⁶

CONCLUSION AND ORDER

The three citations issued by the FLD are hereby affirmed.

Date February 25, 2026

SO ORDERED.
DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

⁶ There is at least one other fact that cuts against Energy Savers's argument that Alexander and Francisco were independent contractors. The Petitioners gave Alexander paid vacation, which is not something a company usually does for an independent contractor. However, it is not clear whether or how I should consider that within the three enumerated conditions in §148B(a).

Eric Tennen
Administrative Magistrate