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Ex-editor challenges TripAdvisor labor policies

The Boston Globe

Illegal 'contractor' status robs staffers of benefits, suit claims

By Robert Weisman, Globe Staff | July 9, 2008

A former Web content editor for TripAdvisor LLC has filed a complaint in Norfolk Superior Court on behalf of herself and other content providers for the popular travel website, alleging the Newton company, owned by Expedia Inc., violates Massachusetts law by classifying them as independent contractors rather than employees.

If it is certified as a class-action suit, as the plaintiffs are seeking, the case could set a precedent for a growing number of Internet companies that tap outside writers and editors to generate content, according to employment law specialists.

The complaint was lodged on July 2 by Deirdre Kiely of Foxborough, who worked for TripAdvisor from 2003 to 2006, writing articles for the site and editing reviews of hotels and restaurants submitted by travelers worldwide.

Under state law, the suit alleges, the editors should be classified as employees - eligible for employee-level pay, workers' compensation, unemployment payments when they lose their jobs, and other benefits - if their work is central to the company's business.

"The burden is on the employer to show the worker is an independent contractor," said Shannon Liss-Riordan, a lawyer who is representing Kiely. "The employer has to show the worker performed services outside the usual course of the company's business."

Liss-Riordan said TripAdvisor's Web content editors are paid by the hour and typically work 20 to 40 hours a week. Many work full time, she said.

Brian Payea, a spokesman for TripAdvisor, yesterday said the company's policy is not to comment on legal matters. It is required to submit a response no more than 20 days after being formally served with the complaint.

TriAdvisor, owned by the online travel agency Expedia Inc., of Bellevue, Wash., bought nine other companies in just over a year. It has more than 400 employees, including about 300 at its Newton headquarters and a site in Charlestown. Last week, TripAdvisor disclosed it had purchased a pair of California-based travel sites: [VirtualTourist.com](#) Inc. and [OneTime.com](#) Inc. With those sites, the company said, its network reaches 32 million unique monthly visitors.

According to Kiely's complaint, "hundreds of Web content editors" at TripAdvisor work at the company's offices or from home and receive their assignments by logging into the company's Internet database or directly from company supervisors.

"As a result of their misclassification as independent contractors, [the] defendant's Web content editors have not received the benefits that inure from the employment relationship under law," the complaint says.

Liss-Riordan said she could not specify the amount her client was seeking in damages until she has conducted discovery.

The status of outside contractors at Internet sites was an issue in the 1990s when long-term temporary workers at [Microsoft Corp.](#) websites, a group known as "permatemps," sued the Redmond, Wash., software

company, charging they were unfairly denied benefits, such as discounted stock options, given to employees.

After the US Court of Appeals for the 9th Circuit ruled in favor of the permatemps, the two sides reached a \$97 million settlement in December 2000. While that case focused on a different issue, the claim that website contractors were doing much the same work as employees, the setback to Microsoft long restrained other Internet companies from hiring independent contractors to generate website content.

More recently, however, the practice has reemerged, said Cathy Ruckelshaus, litigation director at the National Employment Law Project, a New York nonprofit that advocates for low-wage workers.

"I think Internet companies temporarily stopped doing it after the Microsoft case," Ruckelshaus said. "But now it's becoming more and more prevalent again because it's so lucrative for employers. Employers understand that putting an independent contractor label on someone gets them out of all the responsibilities they have for their employees."

As the economy has slowed, putting pressure on companies, many have hired contractors to do work outside the normal scope of their business. But there's been a flurry of lawsuits - by janitors against cleaning companies, by delivery drivers against trucking companies, and others - alleging violations of employment laws.

Ruckelshaus said there is little enforcement of state laws requiring companies to classify as employees those people who do work central to a business, whose work is directly supervised by company managers, and who aren't engaged in independent trade.

"Most state agencies are complaint-driven," Ruckelshaus said. "If nobody's telling them about it, they don't know about it."

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