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Water Cooler Talk: Classification Lessons From 'Love Is Blind'

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This article is part of a monthly column that connects popular culture to hot-button labor and employment law issues. In this installment, we discuss a recent debate over whether cast members on reality television series "Love Is Blind" should be classified as employees.

A significant, high-visibility industry — reality television — has reignited the debate over what is considered to be work.

In Delirium TV LLC and Kinetic Content LLC, the National Labor Relations Board **claimed** in December that the producers of the reality series "Love Is Blind" misclassified cast members as nonemployee participants, thereby inhibiting them from engaging in concerted activity and depriving them of protections under the National Labor Relations Act.

In July, prior to the "Love Is Blind" debate, the California Supreme Court **ruled** unanimously in *Castellanos v. State of California* that app-based ride-hailing and delivery services companies can continue to classify their drivers as independent contractors rather than employees, ending a lengthy legal battle between labor unions and tech companies over the classification of app-based service workers in the state.

However, the Delirium TV case brings this issue back into the spotlight and provides lessons for employers in all industries and jurisdictions about how best to structure independent contractor relationships.

The Reality Behind Reality TV

"Love Is Blind" is a Netflix reality show — the most recent season of which premiered in February — that is promoted as a social experiment where single people look for love and get engaged all before they ever meet in person.

The contestants date in so-called pods for 10 days and only meet face-to-face after accepting a proposal, which is then followed by a tropical couples retreat.

After the retreat, the couples return home and live together in an apartment complex. They meet their partner's friends and family, integrate into each other's lives, and plan a wedding, which is held — believe it or not — at the end of four weeks.

During filming, the contestants are classified as independent contractors and are paid a stipend of $1,000 per week for the first two weeks, and $1,000 per week for each week thereafter, up to an $8,000 cap.

As a condition of participation, they sign an agreement providing that they understand and acknowledge that they "may be required to participate in production-related activities for six (6) to seven (7) days a week, for up to twelve (12) hours per day and up to sixty (60) hours per week (which may include Saturdays and Sundays)."

The NLRB filed a complaint against Delirium TV and Kinetic Content based on the investigation stemming from unfair labor practice charges filed by contestants Renee Poche and Nick Thompson through the Unscripted Cast Advocacy Network Foundation, claiming the company misclassified the cast as nonemployee participants instead of employees.

While the NLRB's complaint does not fully explain its reasoning, it appears to rely heavily on the participant agreements, which detailed a high level of direction and control over the cast members' conduct.

According to Thompson and Poche, participants signed strict agreements that included broad confidentiality clauses, $50,000 in penalties for leaving the show without approval and bans on media appearances.

The producers even filed a $4 million arbitration claim against Poche for allegedly violating her contract's nondisclosure clause.

The Test for Independent Contractor Status Under the NLRA

The NLRA defines "employee" to exclude independent contractors, which means that independent contractors are not able to unionize under the NLRA and that they lack other protections typically afforded to employees.

In 2019, during President Donald Trump's first term, the NLRB **determined** in SuperShuttle DFW Inc. that a worker's "entrepreneurial opportunity" was the most important factor in determining whether they were properly classified as an independent contractor.

In a 2023 decision in The Atlanta Opera Inc., former President Joe Biden's NLRB **held** that it would consider a worker's entrepreneurial opportunity along with all other aspects of the relationship in determining independent contractor status under the NLRA, with no one factor being more important or determinative than another. This multifactor test made it more difficult for a worker to be classified as an independent contractor.

Under the current administration, we anticipate that the NLRB will likely revert to the more independent contractor-friendly test from Trump's first term.

Other Tests for Determining Contractor Classification

The NLRB's test is not the only test for determining independent contractor classification. The U.S. Department of Labor has a test as well, and that test has also changed depending on who is in the White House.

During Trump's initial term, the DOL made it easier for employers to classify workers as independent contractors,

setting forth **a rule** that emphasized two key factors to determine independent contractor status: (1) the degree of the company's control over the manner and means by which the individual performs the work; and (2) the individual's opportunity for economic gain or loss.

Under the Biden administration in 2024, the DOL **rescinded** the Trump-era DOL's independent contractor rule and replaced it with a six-factor test focused on the following:

- The worker's opportunity for profit or loss depending on their managerial skill;
- The individual's and the company's relative investments in the business;
- Whether the relationship was permanent;
- The nature and degree of the company's control over the individual;
- The extent to which the company considers the individual's work to be an integral part of its business; and
- The individual's skill and initiative.

In the first few days of his current term, Trump moved to delay a hearing pending in the U.S. Court of Appeals for the Fifth Circuit in *Frisard's Transportation LLC v. DOL*, challenging the 2024 rule and signaling that he will be revisiting Biden's six-factor test.

In addition to federal tests for independent contractor classification status, states have varying rules for whether workers are properly classified. Most states use a multifactor test to determine classification.

However, a few states, like California, have adopted the more restrictive ABC test, which examines three factors, each of which must be met. If any one factor of the test fails, the worker is classified as an employee.

The factors of California's ABC test are as stated:

- The individual is free from the company's direction and control when performing the work;
- The work performed by the individual is outside the usual course of the company's business; and
- The individual is customarily engaged in an independently established business that is of the same nature as the work that the individual is performing for the company.

Other states, such as New Jersey, have adopted a modified version of the ABC test where Part B provides that the work must either be outside the company's usual course of business, or it must be performed outside all of the company's places of business.

Because of the varying tests for independent contractor classification, employers operating in multiple states face an added layer of risk, as a business model that is compliant in one jurisdiction may not hold up in another.

Understanding Liability

Misclassifying independent contractors can result in steep financial consequences. Employers may face liability for unpaid wages, overtime, benefits and taxes, along with penalties from both federal and state agencies.

What makes the issue especially challenging is that liability can come from multiple sources, including government audits, private lawsuits and enforcement actions. These costs can add up quickly.

Yet few companies voluntarily reclassify contractors as employees unless the original classification is especially weak. Rather, most prefer to enhance compliance within the existing model rather than risk sending a signal that could invite litigation or unsettle contractor relationships.

The key to reducing risk is to proactively review any agreements between the company and the worker, as well as the actual working relationship in practice.

A thorough compliance review typically involves evaluating dozens of factors, identifying areas of concern and making changes that align business goals with legal requirements.

Instead of reclassifying workers, which can signal past misclassification and prompt legal action, many companies choose to improve their current independent contractor models. This allows them to retain flexibility while reducing the chance of a legal challenge and strengthening their position if one occurs.

Why it Matters: Rights at Stake

The distinction between contractor and employee status has serious consequences, as Thompson and Poche made clear.

Employees enjoy legal protections such as minimum wage, overtime, the right to speak out about working conditions and the right to organize. Independent contractors do not enjoy those protections.

According to Thompson and Poche, many of those rights were stripped from cast members through the strict participant agreements they signed.

Ironically, the producers followed what many companies assume is best practice by using written contracts. But instead of protecting them, the contracts may serve as evidence of misclassification.

Ultimately, what matters most is not what is in the contract, but how the relationship works in practice. Courts and agencies look at the day-to-day reality of the relationship.

If the producers dictated when contestants filmed, how they behaved and what they said, that could tip the scale toward employee classification.

A Shifting Legal Landscape and the Future of Reality TV

Will reality television change because of these lawsuits? That remains to be seen. But if the producers treat this as a compliance opportunity, they have options.

For example, they can restructure the agreement to provide participants with better working conditions and more freedom over the manner and means of their participation.

In fact, the producers have already deleted one controversial clause, which had provided for a $50,000 penalty for contestants who left the show early.

If the board rules that the participants are employees, they will be entitled to minimum wage and overtime pay, as well as meal and rest breaks under California law, and will have the right to organize.

Ultimately, there are ways to restructure the relationship without losing creative control.

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