

Why NLRB Is Unlikely To Succeed In Misclassification Case

Law360

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[Richard Reibstein](#), co-head of Locke Lord's Independent Contractor Misclassification and Compliance Practice, and [Janet Barsky](#) (both of New York) co-authored an article featured as an "Expert Analysis" in Law360. The article discusses the National Labor Relations Board's recently issued complaint that could make the simple act of misclassifying workers as independent contractors a violation of the National Labor Relations Act. The authors note this would be an unprecedented extension of the nation's law governing labor-management relations, but it is unlikely the NLRB will succeed in its claim that the mere act of classifying workers as independent contractors will constitute a violation of the NLRA because of the free speech defense in Section 8(c) of the act.

"If successful, this would pave the way for unions to organize workers currently classified as independent contractors," Reibstein and Barsky said. "The likelihood of this initiative by the NLRB succeeding, however, is rather slim, as the complaint was issued despite a time-honored statutory defense available to companies. Nonetheless, it may be prudent for companies to take certain steps to better protect themselves from this type of initiative by the NLRB."

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