

Publications

NLRB Revisits the Definition of an Independent Contractor

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Nelson Cary, a partner in the Vorys Columbus office and a member of the labor and employment group, authored an article for TLNT.com titled "NLRB Revisits the Definition of an Independent Contractor." The article was about a case recently decided by the National Labor Relations Board (NLRB) related to delivery drivers for Federal Express Home Delivery and whether or not they can be classified as independent contractors.

The article states:

"On the facts in this case, the NLRB found that the drivers were employees, and not independent contractors. They could, therefore, join a union. The opinion and analysis is quite lengthy, and this post will not belabor the multi-factor test (you can find it on page 2 of the opinion) that the NLRB uses for independent contractor determinations.

For the labor professional, the significance of this case does not lie in that test.

Instead, the significance of the case is in how the NLRB dealt with a decision by the U.S. Court of Appeals for the District of Columbia Circuit in Washington, D.C. In a nearly identical fact pattern, that court found that FedEx drivers were independent contractors under the National Labor Relations Act.

The NLRB, purporting to merely 'restate and refine' its test to determine independent contractor status in light of this court decision, in fact overruled portions of at least three prior opinions. In doing so, it significantly narrowed the importance of a key factor that suggests an independent contractor relationship: the importance of the entrepreneurial opportunity for gain or loss."

To read the entire article, visit TLNT.com.