

Stripper 'Consultant' Strikes Back against Boss



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By KATHERINE REYNOLDS LEWIS, The Fiscal Times

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When Ramona Cruz worked as a stripper at three different clubs in Massachusetts, her bosses dictated everything, from her skimpy attire, hair and makeup to the long hours she performed on stage and when she could participate in more lucrative private dances with customers. Because she was eager for a job, Cruz agreed to work for no wages or benefits, just tips from her customers. Moreover, she had to share part of her tips with the club's other workers. Last fall, Cruz was stunned to learn from a friend that by law she should have been treated as an employee entitled to a minimum wage, overtime and other protections.

Instead, the club owners had gotten around federal and state labor laws for over a decade by classifying her and other exotic dancers as "independent contractors" who were entitled to none of those benefits. Last September, Cruz, 35, the mother of an eight-year-old girl, sued to recover the lost wages, tips and fees she was required to pay to work in the clubs, in three pending class-action suits challenging the classification of strippers as independent contractors.

"You don't feel like an independent contractor because you have to follow all their rules," Cruz, who now works as a home health aide in Boston, told The Fiscal Times. "We had to be there or we got late fees. Whatever they said went."

Cruz is part of a wave of workers pushing back against employers who have sought to cut personnel costs by relegating workers to independent consultant or freelance status. Businesses as varied as

strip clubs, trucking firms and cleaning companies have been successfully sued in recent years for misclassifying workers as "independent contractors," and additional class action lawsuits are pending in federal courts around the country.

Shannon Liss-Riordan, Cruz's attorney, who won a class action suit against another Massachusetts strip club in 2009 over similar practices, said, "Workers miss out on all the protections that have been established over the years by the federal and state governments. In these tough economic times there are many workers who are willing to go along with that because they need to feed their families," Liss-Riordan said.

The three clubs being sued are Mardi Gras in Springfield, Mario's Showplace in Webster and King's Inn in Dartmouth. A man identifying himself as the owner of Mario's declined to comment, when reached by phone. Representatives of Mardi Gras and King's Inn couldn't be reached for comment.

Employers and worker advocates have battled over job classifications for more than 20 years, from the time Microsoft dropped its effort to use contract programmers to the ongoing cases involving FedEx drivers. State and federal examinations have found as many as 30 percent of employers misclassified workers as independent contractors, according to the National Employment Law Project.

When businesses use an independent contractor to perform work rather than an employee, they don't have to pay taxes for Social Security, Medicare, unemployment or worker's compensation, which can save 15 to 30 percent in staffing costs, according to experts. Some workers may prefer the arrangement because it allows them to deduct business expenses against their income, although they become responsible for self-employment taxes.

But regardless of what the worker and business agree to privately, federal and state laws set strict requirements around an individual's employment classification. The key tests focus on whether the "contractor" has control over how and when to perform the work, is economically independent of the company, uses his or her own equipment and is able to profit when business is good.

State and local government agencies have stepped up enforcement of the labor and tax laws in order to protect workers and recoup tax revenue. Last year the Labor Department hired an additional 125 investigators and the Internal Revenue Service added 100 new investigator positions.

Because there are so many Americans working in this job classification netherworld, the fiscal 2011 federal budget projects that closing just one worker classification loophole would bring \$6.9 billion into government coffers over the next 10 years. A 2009 Treasury report estimated that the government loses a total of \$54 billion in tax revenues each year because of underreported employment taxes.

"There's a terrific amount of attention being put on this issue," said Michelle LeBeau, managing shareholder at Ogletree Deakins, a law firm that represents employers. "States are being even more aggressive" than the federal government. New York, Pennsylvania, Maryland and Miami-Dade County have all passed laws targeting worker misclassification and boosting penalties for underpaying wages.

The complex web of federal and state laws regarding labor and tax make the determination of independent contractor status extremely difficult, LeBeau said. A worker may end up being considered an employee for purposes of worker's compensation, for instance, while being viewed as an independent contractor for tax purposes. Or an individual might pass all the tests to be an

independent contractor for federal law but end up being considered an employee under local statutes.

Generally, the economy benefits when self-employment grows, as small businesses may create jobs for others, said James Sherk, a senior policy analyst in labor economics at the Heritage Foundation. Often, employers are making a good faith effort and simply get confused by the convoluted, overlapping rules on independent contractors.

"It's a quagmire for employers," LeBeau agreed.

The Great Recession brought into sharp relief the practice of using independent contractors. For example, when workers lost their jobs and filed for unemployment insurance they had to challenge any independent contractor status to become eligible for benefits. Next, as the recovery began and companies started tentatively adding resources, they looked first to independent contractors and temp agencies, as is common in a recovery.

"Shortly after the recession started, we started getting calls from people saying, 'My employer has shifted me to being an independent contractor,'" said Nicholas Woodfield, principal at the Employment Law Group, a Washington, D.C. law firm representing workers. "The employers, whether they're intending to or not, are fee shifting the expenses of having a workforce onto the employees and the federal, state and local governments."

The U.S. Department of Labor is expected to issue proposed regulations this spring that would force employers to keep more records and to inform independent contractors of wage and hour laws and the rights they're giving up, said Lawrence McGoldrick, of counsel with the law firm of Fisher & Phillips, which represents employers. "It's a perfect storm of regulation, legislation and litigation," McGoldrick said. "This huge crackdown is going on."