



U.S. Labor Board Complaint Says On-Demand Cleaners Are Employees

By **Josh Eidelson**

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- Handy is accused of illegally treating staff as contractors
- Agency's orientation expected to change with Trump appointees

The National Labor Relations Board has issued a complaint against the digital on-demand platform Handy Technologies Inc., alleging that workers who provide its home cleaning services are employees despite the company's claims to the contrary.

The case is one of the first in which the agency is directly addressing under what circumstances a sharing-economy company's control over its workers makes it their legal employer -- an issue on which its approach could soon change under Republican leadership.

The complaint, issued Monday by the agency's Boston-based regional director and provided to Bloomberg by the workers' attorney, alleges that Handy "has misclassified its cleaners as 'independent contractors,' while they are in fact statutory employees" who are entitled to the protections of federal labor law.

The case concerns workers who are trying to bring wage and hour class-action claims against Handy, who argue the company is violating their rights as employees by trying to force them into arbitration instead. Unless there is a settlement, it now heads to an administrative law judge, and from there could be appealed to the labor board's presidentially appointed members, and then into federal court.

Handy did not respond to requests for comment.

Antiquated Laws

Like other on-demand platforms such as Uber Technologies Inc. and Lyft Inc., Handy has denied that the workers providing its services are employees. The company has led a charge to change state and federal labor laws in order to make it easier to avoid being treated as employers, a reform that Chief Executive Officer Oisin Hanrahan said last year “would definitely help with some of the litigation that’s in play.”

“The changes we’ve seen in the last decade are just immense -- we’ve basically built the Jetsons,” Hanrahan, who argues a labor law reboot would benefit both workers and their companies, said in an October interview. “We’ve got some pretty antiquated laws that are probably Flintstone era, which is unfortunate.”

That’s not how labor advocates see it.

“There are a lot of companies out there that are assuming they can get away with classifying their workers as independent contractors because they think everyone else is doing it,” the Handy workers’ attorney Shannon Liss-Riordan, who has also brought claims against other “sharing economy” firms like Uber and Grubhub, said in an interview Wednesday. “I would hope this complaint would give them pause.”

The Handy complaint follows one issued last October by the labor board’s Chicago-based regional office against the on-demand delivery company Postmates Inc, which the agency alleged had violated its drivers’ rights as employees by requiring them to address grievances through arbitration rather than in court, and by restricting them from discussing safety issues with each other. Postmates, which considers its drivers to be contractors rather than employees, denied wrongdoing but subsequently changed its arbitration policy.

Risk Shift

Which workers qualify as employees eligible for the protections of labor law has been a hard-fought question between business and labor advocates long before the advent of on-demand apps.

“The issue itself is not novel -- the NLRB and the courts have been looking at this issue for decades and decades and decades,” said former labor board member Wilma Liebman, who served as chair of the agency under former President Barack Obama.

What is more new, she argued, is “the inventiveness of these gig economy companies in how they structure their arrangements and how they shift all the risk to the people doing the work, and try to absolve themselves of any responsibility that employers would have.”

That may soon be a minority view at the top ranks of the labor board. NLRB general counsel Richard Griffin, the Obama appointee currently overseeing the agency’s investigation and prosecution of complaints, is finishing out a term that expires at the end of October. President Donald Trump is expected to replace him with employer-side labor lawyer Peter Robb, and has already appointed fellow management attorney William Emanuel and former Republican congressional aide Marvin Kaplan as members of the NLRB.

Once Emanuel has been confirmed, the body will have a Republican majority that likely will take a more pro-business approach.

In June, Republican U.S. House members Virginia Foxx and Tim Walberg, the chairs of the Committee on Education and the Workforce and of the Health, Employment, Labor, and Pensions subcommittee, praised Trump’s NLRB picks as an opportunity to “move the NLRB in a new direction” after what they called “years of an activist agenda that put the interests of union leaders over hardworking men and women.”

“I like to think that the new members of the board, the new general counsel, are going to rigorously enforce the law,” Liebman said. “Could it come out different? Sure.”