



NEWS



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HP Labor Suits Highlight Tech Industry Trend



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The Yankee Group's Andy Efstathiou said that labor laws are "pretty clear cut" in stating that long-term employees cannot be labelled a contract workers. "There would be no cause for action if it was a temporary worker," he said. "The ongoing status is what gives rise to these kinds of suits."

[Hewlett-Packard](#) (NYSE: HPO)   is being accused of incorrectly classifying workers as contractors in two lawsuits recently filed in U.S. District Court. The suits highlight a growing issue for technology employers, which sometimes seek to cut costs by classifying even long-term employees as contract workers.

In HP's case, two lawsuits filed in Idaho -- one filed last month on behalf of HP employee Mike McClendon, and another, class-action suit filed this week -- allege that the company wrongfully deprived some of its workers of benefits by classifying them as contractors or contingent workers rather than as permanent employees.

The suits also accuse HP of directing a cover-up of the alleged practices once HP officials realized they were violating the law. Such actions would represent a violation of federal laws, including the Sarbanes-Oxley Corporate and Criminal Accountability Act and the Employee Retirement Income Act.

Classification Complaint


HP did not respond for comment, but a company spokesperson has previously indicated that the company believes both lawsuits lack merit.

Yankee Group program manager Andy Efstathiou told TechNewsWorld that the suits reflect an ongoing trend that is pitting technology workers against their companies based on how they are classified and compensated.

"I see a lot of complaints like that," he said. "They haven't been there forever, but in the past 10 years we've been seeing them. It's certainly an ongoing issue and I don't see that changing."

According to McClendon's suit, which HP has not yet officially responded to, the HP employee was a project manager in charge of 19 people. The suit said that eight of the workers under

McClendon were acknowledged as HP employees, but the other 11 were classified as "contractors" or "contingent workers."

"The contractors for the most part did exactly the same work under the same circumstances as the employees, and their designation as contractors was and is believed by plaintiff to be illegal as violation of various federal laws, in that the contractors did not receive the benefits, job security  and other status enjoyed by employees," the suit said.

The suit is similar to a case known as *Vizcaino v. Microsoft*, which resulted in a nearly US\$100 million payout from the software giant and has served as precedent on the issue, according to legal observers.

Shocked by Shredding

McClendon's suit also accused HP of an attempted cover-up. The court filing details a meeting in which, after being briefed on illegal practices found in the Vizcaino-Microsoft case, HP managers realized they had violated the law. According to the suit, the managers then ordered employees to destroy all notes -- both written and electronic -- on the matter.

"It is difficult to describe how shocked I was at this 'destroy all notes' order," McClendon wrote in a document for senior HP management. "There is only one reason that we were being ordered to destroy our notes: we all knew that we were doing something very wrong, so we had to hide it. And a dozen people in that room were hiding it, conspiring as a group to hide it."


According to McClendon's suit, HP responded to his complaints of improper and illegal procedures by terminating him as a project team leader, reducing his pay, and impeding his advancement at the company.

Fine Line for Employers

While McClendon is seeking reinstatement and damages, the class-action suit against HP is seeking \$300 million on behalf of some 3,000 employees in the U.S. An attorney familiar with the case told TechNewsWorld the plaintiffs are also alleging that the illegal practices are still ongoing at HP.

John Challenger, chief executive officer of outplacement firm Challenger, Gray, & Christmas, told TechNewsWorld that the issue is complicated by the fuzzy lines separating full-time and temporary employment. "There's no question the boundaries between full-time, permanent employee and contract employee of one kind or another are very blurry," he said. "This is an area that is in many ways being worked out in the courts and redefined."

Yankee Group's Efstathiou said that labor laws are "pretty clear cut" and stressed the long-term employment of people as contract workers can drive complaints such as those against HP.

"There would be no cause for action if it was a temporary worker," he said. "The ongoing status is what gives rise to these kinds of suits." 

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