

Exotic Dancers not Employees under Nevada Wage Laws

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A victory for the defense in **Terry v. SHAC, LLC, d/b/a/ Sapphire Gentlemen's Club**, as a state court in Nevada ruled that **exotic dancers who performed there were not employees of the club**. The dancers contracted individually with the club pursuant to a rental agreement, under which a dancer paid flat fees to the club on any night she performed.

In a class action suit, the dancers claimed they were employees rather than independent contractors. Although the dancers retained all dance fees paid to them by the patrons, they claimed entitlement to minimum wages, as well as return of all the fees paid by dancers to the club. **The dancers had calculated damages over the class period in excess of \$40 million**. However, the club presented evidence that the dancers received compensation greatly exceeding that amount during the class period.

The parties filed **cross motions for summary judgment** on the issue of whether the dancers were employees. The Nevada definition of "employee" under the wage and hour laws, found in NRS 608.010, is as follows:

Employee includes both male and female persons in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawful or unlawfully employed.

Rejecting the Plaintiffs' claim that the **"economic realities" test, commonly employed for FLSA claims**, applied, **the district court instead applied the five factor test used to determine an employment relationship under Nevada's**

workers' compensation statute, which contains essentially the same definition of "employee." Those factors, which are to be given equal weight, include:

- 1) degree of supervision exercised by the putative employer over the worker;
- 2) the source of the worker's wages;
- 3) the existence of the right to hire and/or fire the worker
- 4) the right to control the hours and location of the work; and
- 5) the extent to which the workers' activities further the general business.

The Court noted that it was undisputed that the club did not pay the dancers, did not control the hours and days the dancers performed, and did not restrict the dancers from performing at other establishments. While the dancers' activities furthered the business of the club in the sense that their performance drew patrons, their activities enhanced their own business as least as much as that of the club, as only the dancers benefited from increased income if they increased the number of lap dances performed. Thus, three of the five factors clearly weighed in favor of the dancers, and **the court found that the balance of the factors weighed in favor of nonemployment status.**

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