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ARE YOUR INDEPENDENT CONTRACTORS REALLY EMPLOYEES?

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ARE YOUR INDEPENDENT CONTRACTORS

REALLY EMPLOYEES?

In order to avoid the substantial expenses incurred by employers when hiring employees, such as matching tax contributions and benefits, most employers in this era of full employment are attempting to create independent contractor relationships with their employees. In most instances, that is like fitting a square peg in a round hole.

The IRS has certain tests they apply to the relationship in order to determine whether it is truly one of a independent contractor. Businesses should be wary of independent contractor status since many workers prefer it, it can create a great deal of controversy.

The IRS typically looks at several core factors to determine whether your independent contractor is, in fact, an independent contractor and not an employee. A select group of those factors are on the Chart as follows:

EMPLOYEE v. INDEPENDENT CONTRACTOR

EMPLOYEE

Must comply with employer's instructions regarding when, where and how to perform tasks.

Trained by employer.

Employee does the work.

Employer hires assistants.

Employer sets work hours.

Employee works full time for employer.

Expenses paid by employer.

Work performed on site.

Employee's services are not generally available to someone else.

Maintains continuous relationship with the employer.

Paid by the hour or salaried.

Employer provides tools and equipment.

No profit enjoyed or loss suffered.

Can be fired at any time

Employee can quit the job without liability.

INDEPENDENT CONTRACTOR

Determines place and sequence of work.

Train on their own.

Anyone can do the work so long as the contract is fulfilled.

Assistants hired by contractor.

Contractor works whenever they choose.

Contractor provides services to numerous others.

Contractor pays there own business and travel expenses.

Contractor generally works off site.

Contractor's services are available to others.

Works by the task or job contracted.

Independent contractor is paid by the job.

Uses their own tools.

Can make a profit or suffer a loss.

Cannot be fired if performance satisfies the contract.

Contractor required to complete the job according to the contract specifications.

As you can see, there are specific guidelines which must be followed in order to avoid a challenge from the IRS that your independent contractors are nothing more than employees. Your failure to adhere to these guidelines could result in a large assessment of penalties and back taxes. All it takes is one disgruntled employee or purported independent "contractor" to turn what you thought would be a lifesaver into a loser. Take the time now to evaluate your independent contractor relationships to make sure they are not employees in disguise. Better yet, review your independent contractor agreement to make sure that in the future you do not run afoul of the guidelines set forth above.

Keith McLennan is a partner in the business law firm of Miller, Turetsky, Rule & McLennan, with an office in Collegeville, Pennsylvania. He invites you to contact him with your questions (at no obligation to you) at kmclennan@millerturetsky.com or 3770 Ridge Pike, Second Floor, PA 19426, 610.489-3300.