

Will our name on consultant's business cards affect his independent contractor status?

Q. One of our former employees, Joe Smith, has started an engineering consulting business. We have contracted with Joe to provide services similar to those he provided when employed. Would providing him with business cards bearing our name and logo jeopardize his independent contractor status?

A. It might. The IRS, the U.S. Department of Labor as well as the North Carolina Department of Labor have varying tests for determining whether someone is a true independent contractor or actually an employee. Whether and how the businesses of the contracting persons or entities are integrated is an element in all of the tests. Therefore, if Joe uses your business cards, that could be a problem.

Joe should have his own business cards that give information about his new company. If it's absolutely necessary to identify Joe with your company, he might consider including something similar to the following: "ABC Co. Preferred Contractor" or "Clients Include: ABC Co."

Of course, no one factor of the varying contractor/employee tests is usually definitive. The entire relationship must be reviewed in evaluating independent contractor status.