

Key to maintaining contractor status: Don't exert too much control over the work

There's a fine line between spelling out expectations and unduly controlling exactly how contractors and subcontractors do their jobs. If you use too heavy a hand, those workers you consider to be independent contractors can morph into employees. And that can mean expensive litigation.

Recent case: Contina worked as an employee for two years for Bluebonnet Trails Community Services helping mentally disabled individuals get the care they needed. Then her employer moved to an independent contractor model and encouraged employees to set up their own companies and contract with it instead of remaining employees.

Contina set up a company and applied to become a contractor. She was accepted but soon it was apparent she wasn't working out. Complaints came in, her invoices needed to be reworked and she generally wasn't living up to her contractual obligations. Bluebonnet Trails terminated the agreement.

Contina sued, alleging she was really an employee and not a contractor. The court evaluated her workday and concluded she really was her own boss, setting her hours and working at her own pace. It tossed out her case. (*Graham v. Bluebonnet Trails*, No. 12-CA-977, WD, 2014)

Final note: Converting some employees into independent contractors? Get expert legal help drafting the contract. Your attorney can best help you define deliverables while leaving the details to the contractor. That kind of demarcation helps ensure that your former employee really has become a contractor.