

Converting employees into contractors?

Prepare for expensive, protracted litigation

Here's a warning for employers thinking about turning employees into independent contractors to avoid paying benefits and payroll taxes: If some of the employees challenge the decision, you may be in for years of expensive, time-consuming litigation. That can easily turn a penny-pinching strategy into a money pit.

Recent case: Dynamex is nationwide courier and delivery service whose drivers deliver packages, letters and parcels to customers. Before 2004 Dynamex had classified its California drivers as employees.

In 2004 Dynamex converted all its drivers from employees to independent contractors.

The first lawsuit against the company was filed in April 2005, alleging that drivers continued to perform the same tasks they did when classified as employees, with no substantive changes to the work or how much control Dynamex had over how that work was performed. Charles, one of the reclassified drivers, sued and sought to include about 1,800 similarly situated drivers.

Over the next few years, the case worked its way up and down the California court system.

By late 2014, a California appellate court sent the case back to the trial court with new instructions on how to determine whether the workers were employees or independent contractors. The litigation likely will continue for a few more years. (*Dynamex Operations West v. Superior Court*, No. B249546, Court of Appeal of California, 2nd Appellate District, 2014)

Advice: The Dynamex reclassification initiative might have seemed like a no-brainer at the time it was instituted. Make sure reclassification efforts are worth the litigation risk. Ask your attorney to chase out the implications if you get dragged into court.