

Employee or contractor? Degree of control is key factor

The IRS and the courts are increasingly ignoring the “independent contractor” label that companies increasingly slap on their workers. Instead, they’re reclassifying those relationships as “employees.” And that’s not good for employers.

Once an independent contractor is reclassified as an employee, the company is on the hook for minimum wage, tax withholding and other responsibilities for these “new” employees.

The key to the classification lies in how much—and what kind of—control your organization asserts over the person’s work.

The more control you exert over when, where and how workers do their jobs, the more likely they’ll be deemed full-fledged “employees” by the courts. (*See more criteria in the box below.*)

Recent case: Dr. Christopher Johnson, who is black and bisexual, worked as a contract physician at the Riverside Community Hospital. He performed plastic surgery and provided trauma consults in the hospital’s emergency room.

Although his written agreement specified that Johnson was a “contractor,” the hospital determined which shifts he worked and which nurses he worked with. The hospital even told him which credentials he had to put on the wall.

Johnson believed he was truly an employee. He sued for discrimination under a California civil rights act. The court sided with the hospital, simply because the state law didn’t cover employment discrimination.

However, even as it dismissed his case, the court observed that Johnson’s relationship with the hospital “was materially indistinguishable from that of an employee.” (*Johnson v. Riverside Healthcare System*, No. 06-55280, 9th Cir., 2008)

Independent contractor? 9 questions to help you decide

Behavioral control

1. Do you control when, where and how the work gets done? Less control means a greater chance the person is an independent contractor.

2. What training do you provide the person? Contractors typically get their own training.

Financial controls

3. Can the worker realize a profit and incur a loss? Contractors can realize both.

4. Who else does the person work for? Workers with many clients look more like independent contractors.

5. How do you pay the worker? Employees are usually paid by the hour or biweekly. Contractors are generally paid a flat fee, by the job or hours billed.

Relationship between parties

6. Does a written contract exist? It's wise to get written agreement that describes compensation methods, reimbursement for expenses, etc.

7. Do you provide the person employee-type benefits, such as insurance, a pension plan or vacation pay? Employee benefits are paid only to employees.

8. How permanent is the relationship? Indefinite relationships indicate an employee.

9. Is the work a key aspect of the company's regular business? If the company's success depends on the worker's performance, it leans toward an employee relationship.

For more advice, access our free white paper, [*Independent Contractor or Employee? How to Make the Call.*](#)