

Document details of work, degree of control to prove worker is an independent contractor

When it comes to classifying workers as either independent contractors or employees, the stakes can be high. Get it wrong, and your organization may owe thousands of dollars—even millions—in back wages, benefits and taxes.

To make matters worse, it doesn't matter if a worker signed an agreement that clearly says he's an independent contractor. What really matters are the details of what work he performed, how he was paid and how much control you exerted over how he did the work.

In short, facts matter. Documenting those facts can make it much easier to defeat a challenge from either the worker or a state or federal government agency.

Recent case: Pedram sued Sherbank Azizi Dental, a Sherman Oaks dental practice, claiming he was owed wages, benefits and overtime for all the hours he had put in working as a dentist there.

The dental practice said Pedram had signed on as an independent contractor and not as an employee. It explained to the court exactly how, when and under what circumstances Pedram had worked and been paid.

The court outlined the difference between an independent contractor and an employee and applied that to the facts. It first identified five factors to consider:

1. The worker's opportunity for profit or loss depending on his managerial skill
2. His investment in equipment or materials required for his task or his employment of helpers
3. Whether the service rendered required a special skill
4. The degree of permanence of the working relationship
5. Whether the service rendered is an integral part of the alleged employer's business.

The court also noted that "the principal test of an employment relationship is whether the person to whom the service is rendered has the right to control the manner and means of accomplishing the desired result." It emphasized that the analysis includes looking at the kind of occupation, the skill required and whether the service is a distinct occupation.

Applying this to the work Pedram performed at the clinic, the court noted Pedram obtained his own dental license and had his own malpractice insurance. He signed an independent contractor agreement. He was not supervised at the clinic and received no training there. He decided how much time to spend with each patient, what professional services that patient needed and how that work would be done.

He received paychecks with no tax deductions for employee-related taxes. He received no vacation pay or other

benefits. He earned incentive compensation based on the volume of work he performed.

Taken together, the court said, these facts indicated a true independent contractor arrangement. It dismissed Pedram's lawsuit. (*Soleimani v. Sherbank Azizi Dental*, Court of Appeal of California, 2018)

Advice: A true independent contractor relationship starts with a clear and unambiguous written agreement outlining the terms of the relationship. But it doesn't end there.

Give independent contractors as much freedom as possible to accomplish the work you are contracting for. Allow them the ability to, for example, work for other clients and set their own hours. Exercise as little control over the details of the work as possible beyond making sure the individual is qualified and properly licensed and insured.