

Independent Contractors

Employee or Independent Contractor: A Minefield



Misclassifying an Employee Can Have Disastrous Consequences

Small businesses often try to avoid the costs that come with hiring an employee. Hiring an employee means tax withholding, unemployment compensation, worker's compensation, employment taxes and increased liability risks. All of these can be a serious drain on the small business.

Often, in an attempt to avoid these costs, business owners take the simplistic approach of simply calling the employee an independent contractor. However, the effects of improperly classifying an employee as an independent contractor can be extremely detrimental to your business.

How Epiphany Law Can Help

Independent Contractors can be a valuable tool to keep costs down in your business. However, you have to know the rules and you have to get it right from the beginning.

Correctly determining the status of an employee or an independent contractor requires the expertise of a knowledgeable business attorney. Epiphany Law has the requisite experience and know-how. Moreover, Epiphany Law can assist you in drafting an Independent Contractor Agreement to help solidify the relationship. Such an Agreement is often just the proof you need to satisfy the inquiring minds of the IRS and Wisconsin Department of Revenue.





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What are the consequences if I misclassify an employee as an independent contractor?

The consequences of misclassification are disastrous. Often, you will receive not one but three audits: the IRS, the Wisconsin Department of Revenue and the Wisconsin Department of Workforce Development. In addition to the audits, the monetary costs to your business are often astronomical—from back taxes, unemployment compensation and worker's compensation payments to penalties, fines and interest. Often, the end result is the end of your business.

How could I possibly get caught incorrectly classifying an employee as an independent contractor?

Sometimes it is simply the luck of the draw—you or your "independent contractor" can be randomly selected for audit. One of the targeted areas of audits today is independent contractors.

Often, however, getting caught is the result of a deteriorating relationship with the independent contractor. If the independent contractor files for unemployment compensation, worker's compensation or a tax refund, you will inevitably receive a phone call or letter which will begin the inquiry.

Is there a simple checklist I can use to determine the correct classification?

Unfortunately, there is no simple checklist. The IRS uses a 20 factor test which balances various criteria for and against classification as an independent contractor. This test is different from the test used for determining unemployment compensation coverage and the test for worker's compensation coverage. Regrettably, the rules are confusing and often conflicting. Determining how the rules apply to your unique situation is something only a knowledgeable business attorney can accomplish.

Rely on Epiphany Law as your source of business law expertise for your growing organization.



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