

Get the facts on misclassification under the Fair Labor Standards Act

Employee or Independent Contractor?

It is critical that business owners correctly determine whether the individuals providing services are employees or independent contractors. In determining this, all information that provides evidence of the degree of control and independence must be considered.

Common Law Rules

Facts that provide evidence of the degree of control and independence fall into three categories:

1. **Behavioral:** Does the company control or have the right to control what the worker does and how the worker does his or her job?
2. **Financial:** Are the business aspects of the worker's job controlled by the payer? (these include things like how the worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
3. **Type of Relationship:** Are there written contracts or employee type benefits (i.e., pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

Businesses must weigh all these factors when determining whether a worker is an employee or independent contractor. Some factors may indicate that the worker is an employee, while other factors indicate that the worker is an independent contractor. The key is to look at the entire relationship, consider the degree or extent of the right to direct, control, and finally to document each of the factors used in coming up with the determination.

DOL's Independent Contractor Misclassification Resource

The U.S. Department of Labor has published a resource page on the misclassification of workers as independent contractors. Employers that use independent contractors can use the new tool to conduct a self-audit and ensure their practices can withstand government scrutiny.

DOL's Employee or Independent Contractor?

Resource page: <https://www.dol.gov/featured/misclassification/>



Diedri Garrett, SHRM-CP
HR Consultant
dgarrett@websterrogers.com
843.448.1500 x4226
websterrogers.com