Criteria For Independent Contractor Classification California Law



The U.S. Department of Labor and the California Labor Commissioner's Office aggressively pursue claims against employers for improper classification of independent contractors. The analysis for determining whether a worker can be properly classified as an independent contractor rather than an employee is complex. Outside counsel should be consulted to assist the employer in making such determinations.

As a general matter, an employer can classify workers as independent contractors only if they truly meet the criteria for independent contractor status. If criteria are not met then the employer must hire and classify such workers as employees who must be paid properly and timely with all proper tax withholdings.

The California Supreme Court has adopted the "ABC" test to assist employers in determining whether to classify workers as employees or independent contractors under the California Industrial Welfare Commission (IWC) Wage Orders.

INDEPENDENT CONTRACTOR ANALYSIS

1. Is the worker free from the control and direction of the hiring entity in connection with the performance of the work?

a. No – the individual cannot be classified as an independent contractor under California's IWC wage orders

b. Yes – Does the worker perform work that is outside the usual course of the hiring entity's business?

b.i. No – the individual cannot be classified as an independent contractor under California's IWC wage orders

b.ii. Yes – Is the worker customarily engaged in an independently established trade, occupation or business of the same nature as that involved in the work performed?

b.ii.1. No – the individual cannot be classified as an independent contractor under California's IWC wage orders

b.ii.2. Yes – the individual may be able to be classified as an independent contractor under California’s IWC wage orders