Criteria For Independent Contractor Classification



FEDERAL LAW

The U.S. Department of Labor aggressively pursues 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 U.S. Department of Labor cautions employers that there is no specific number of factors that must be established for independent contractor status, but the Department, nonetheless, offers a set of seven factors to assist employers in the independent contractor analysis.

INDEPENDENT CONTRACTOR ANALYSIS

1. Is the individual's services an integral part of the employer's business?

a. No – the individual may be able to be classified as an independent contractor depending upon the outcome of the employer's complete analysis of the classification criteria

b. Yes – Is the relationship between the individual and the employer intended to be permanent or long-term?

- No – the individual may be able to be classified as an independent contractor depending upon the outcome of the employer's complete analysis of the classification criteria
- Yes – Does the employer provide the facilities and equipment used to perform the services?
- No – the individual may be able to be classified as an independent contractor depending upon the outcome of the employer's complete analysis

of the classification criteria

- Yes – Does the employer control the work of the individual?
- No – the individual may be able to be classified as an independent contractor depending upon the outcome of the employer's complete analysis of the classification criteria
- Yes – Is the employer responsible for profitability and losses of the service or work?
- No – the individual may be able to be classified as an independent contractor depending upon the outcome of the employer's complete analysis of the classification criteria
- Yes – Does the employer provide exclusive work to the individual without competition?
- No – the individual may be able to be classified as an independent contractor depending upon the outcome of the employer's complete analysis of the classification criteria
- Yes – Is the individual's operations solely dependent upon the employer's business?
- No – the individual may be able to be classified as an independent contractor depending upon the outcome of the employer's complete analysis of the classification criteria
- Yes – the individual should be classified as an employee if the employer answered "yes" to the classification criteria questions