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Voice of Independents

Pointers for Proper Employee Classification

Employers Beware

An employer should not classify workers as independent contractors simply to take advantage of tax loopholes or to deprive employees of their rights. If found guilty of misclassification, an employer may be liable for:

- Payment of taxes, even if such taxes have already been paid by the "independent contractor."
- Retroactive payment of employee benefits and applicable wages.
- Fines imposed by the government.
- Legal expenses of an employee who successfully sues the employer.

Avoid Misclassification

To avoid employee misclassification, businesses should make sure that following conditions are met:

1. Establish written agreements with all persons (or their independent employers) whom the company seeks to classify as independent contractors.
2. Identify the parties as a contractor, consultant, or an agent in an independent contractor agreement.
3. Describe the services to be provided.
4. Limit "control" provisions.
5. Emphasize authority of the contractor.
6. Describe the method of payment. Clearly outline on what basis the contractor will be paid (e.g. hourly/daily) or whether it will be an agreed amount for a specific project.
7. Set out the contractor's responsibility for taxes.
8. Describe the term of contract and circumstances for early termination.
9. Set out the contractor's responsibility for equipment and benefits.
10. Make sure the agreement avoids exclusivity. The contractor must be free to perform work for similar companies.
11. Require that the contractor have all required licenses and proper insurance.
12. Train managers dealing with contractors to address only work results, not work methods, leaving it to the contractor to determine manner and means of performing the work.
13. Keep a record of when a contractor turns down a contract assignment or performs work for others.

By following these simple guidelines, you can avoid employee misclassification and its serious penalties.