

2015 LEGAL SEMINAR



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PROPERLY CLASSIFYING INSTRUCTORS AS INDEPENDENT CONTRACTORS

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WORKER CLASSIFICATION

- Employee v. Independent Contractor
- State v. Federal Law



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IRS TEST:

- Behavioral: Does the company control or have the right to control what the worker does and how the worker does his or her job?
- Financial: Are the business aspects of the worker's job controlled by the payer? (these include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
- 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?

THE ECONOMIC REALITY TEST:

- The extent to which the work performed is an integral part of the employer's business.
- Whether the worker's managerial skills affect his or her opportunity for profit and loss.
- The relative investments in facilities and equipment by the worker *and* the employer.
- The worker's skill and initiative.
- The permanency of the worker's relationship with the employer.
- The nature and degree of control by the employer.



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THE ABC TEST:

- (A) The individual is free from control or direction over the performance of
- (B) The service is either outside the usual course of the business for which it is performed, or the service is performed outside of all the places of business of the enterprise for which it is performed; and
- (C) The individual is customarily engaged in an independently established trade, occupation, profession, or business.
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CONTROL



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Department of Labor Administrator's Interpretation No. 2015-1:

[http://www.dol.gov/whd/workers/Misclassification/
AI-2015_1.htm](http://www.dol.gov/whd/workers/Misclassification/AI-2015_1.htm)



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BEST PRACTICES

- Have a written Agreement.
- Do not discipline.
- Permit worker to take on other projects.
- Do not control the method of instruction.
- Allow instructor to choose or modify materials.
- Avoid mandatory daily check-ins.

CONSEQUENCES OF MISCLASSIFICATION

- ✓ Unpaid federal, state and local income taxes.
- ✓ Unpaid workers compensation and unemployment insurance premiums.
- ✓ Unpaid work-related expenses.
- ✓ Overtime compensation.



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