



Employee or Independent Contractor Tax Seminar

Introductions

IRS

EDD

Senior Tax Specialist

Employment Tax Consultant

Business and
Specialty Tax Line:
1-800-829-4933

Taxpayer Assistance
Center:
1-888-745-3886



Housekeeping

- Restrooms
- Parking
- Break
- Cellular telephones and pagers

Objectives

- Understand worker classifications
- Understand how a worker is defined as an employee
- Know where to go for help

Getting Started

- You own a business
- You need help to get work done
- You decide to hire workers
- The workers: Are they employees or independent contractors?

Classification of Workers

- Common law employee
- Independent contractor
- Statutory employee
- Statutory nonemployee (IRS)
- Not subject employee (EDD)

Misclassification Consequences

- Unemployment Insurance or State Disability Insurance claims
- Costly reclassification audits
 - IRS, EDD, Dept. of Industrial Relations
- Liability for worker injury
- Competitor informants

Application of Common Law Factors

- IRS
 - Three categories of evidence
- EDD
 - One primary factor
 - Eleven secondary factors

Application of Common Law

Who retains the right to control whom?

Primary Factor

If the principal has the right to control the manner and means of accomplishing the desired result, whether or not that right is exercised, an employer-employee relationship exists. Strong evidence of that right to control is the principal's right to discharge at will, without cause.

Categories of Evidence


- Behavioral Control
- Financial Control
- Relationship of the Parties

Behavioral Control

- **Directing and controlling how the work is done. Who controls:**
 - When, where, or how to do the job?
 - What tools or equipment to use?
 - What supplies and services are used?
 - Training and procedures?
 - Meetings and reports?
- **or who retains the right to control?**

Financial Control

- **Directing and controlling the business aspects of the worker's job.**
 - Who controls the assets?
 - Who controls method of payment?
 - Are expenses reimbursed?
 - Are services available to relevant market?
 - Is there opportunity for profit or risk of loss?



Relationship of the Parties

- **The way the business and the worker perceive their relationship (their intent).
Issues to consider:**
 - Fringe benefits
 - Ability to discharge or terminate
 - Worker integration into business
 - Permanency of relationship
 - Written contracts

Common Law Factors

Primary - Right of direction and control

Secondary

Behavioral
Control

Financial
Control

Relationship
of Parties

- Supervision
- Extent of actual control
- Skill level
- Distinct trade or occupation
- Method of payment
- Tools and place of work
- Profit/loss
- Length of time
- Services benefit the principal
- Regular part of business
- Belief of the parties

Weighing the Factors



Style It Right Scenario

- Robert, the owner of Style It Right (SIR), operates a hair salon with several salon professionals who share the premises.
- SIR was in the business of renting and leasing space to salon professionals for the purpose of providing beauty services to the general public.
- Stylist Fred and Stylist Sue were classified as independent contractors.



Stylist Fred

Employee

Independent Contractor

Behavioral

Supervision

Follow procedures

Own methods

Extent of actual control

Terminate at will

Contractual liability

Skill level

Training

Own expertise

Financial

Distinct trade or occupation

Single income

Multiple clients

Method of payment

Guaranteed wage

Paid on results

Tools and place of work

Business provides

Worker provides

Profit/loss

No investment

Financial risk

Relationship

Length of time

Continuous

Duration of project

Services benefit the principal

Benefits business

Benefits individual

Regular part of business

Vital to business

Incidental to business

Belief of the parties

Employed

Contractual



Stylist Fred

Employee

Independent Contractor

Behavioral

Supervision



Follow procedures

Own methods

Extent of actual control



Terminate at will

Contractual liability

Skill level



Training

Own expertise



Financial

Distinct trade or occupation



Single income

Multiple clients

Method of payment



Guaranteed wage

Paid on results



Tools and place of work



Business provides

Worker provides

Profit/loss



No investment

Financial risk

Relationship

Length of time



Continuous

Duration of project

Services benefit the principal



Benefits business

Benefits individual

Regular part of business



Vital to business

Incidental to business

Belief of the parties

Employed

Contractual



Stylist Fred: Employee or Independent Contractor

Preponderance of weight indicates that Stylist Fred is an employee.



Stylist Sue

Employee

Independent Contractor

Behavioral

Supervision

Follow procedures

Own methods

Extent of actual control

Terminate at will

Contractual liability

Skill level

Training

Own expertise

Financial

Distinct trade or occupation

Single income

Multiple clients

Method of payment

Guaranteed wage

Paid on results

Tools and place of work

Business provides

Worker provides

Profit/loss

No investment

Financial risk

Relationship

Length of time

Continuous

Duration of project

Services benefit the principal

Benefits business

Benefits individual

Regular part of business

Vital to business

Incidental to business

Belief of the parties

Employed

Contractual



Stylist Sue

Employee

Independent Contractor

Behavioral

Supervision

Follow procedures

Own methods



Extent of actual control

Terminate at will

Contractual liability



Skill level

Training

Own expertise



Financial

Distinct trade or occupation

Single income

Multiple clients



Method of payment

Guaranteed wage

Paid on results



Tools and place of work

Business provides

Worker provides



Profit/loss

No investment

Financial risk



Relationship

Length of time



Continuous

Duration of project

Services benefit the principal

Benefits business

Benefits individual



Regular part of business

Vital to business

Incidental to business



Belief of the parties

Employed

Contractual



Stylist Sue: Employee or Independent Contractor

Preponderance of weight indicates that Stylist Sue is an independent contractor.

RESOURCES - IRS

WWW.IRS.GOV

- Determination of Worker Status – Form SS - 8
- Employer's Supplemental Tax Guide - Publication 15 - A
- Beauty, Barber, and Cosmetology Industries - Publication 3518
- Business and Specialty Tax Line:
1-800-829-4933

RESOURCES - EDD

WWW.EDD.CA.GOV

- Employment Determination Guide - DE 38
- Determination of Employment Work Status - DE 1870
- Information Sheet: Barbering and Cosmetology Industry, DE 231C
- California Employer's Guide, DE 44
- Taxpayer Assistance Center: 1-888-745-3886
- Fax on Demand and EZ Access Information Topics: 1-877-547-4503

Review

You learned:

- About the classification of workers
- About using common law to classify workers
- Differences between employees and independent contractors
- Federal and State resources to use when classifying workers

This Concludes the Seminar



Thank You