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## Misclassifying Employees As Independent Contractors Can Cost You Big Time

As more and more businesses take advantage of the benefits of using independent contractors (ICs) in lieu of full-time employees, the line between these two worker classifications can get easily blurred. While understanding the difference between the two can be quite complex, getting it right can be one of the most important business decisions you'll ever make.

Misclassifying your workers can cost you big-time in penalties, including fines, back taxes, and unpaid benefits. What's more, the Department of Labor recently rescinded a Trump-era rule that would have made it easier for employers to designate workers as independent contractors rather than employees under the Fair Labor Standards Act (FLSA).

<https://www.natlawreview.com/article/what-s-old-new-now-dol-rescinds-trump-era-worker-classification-rulemaking-eyes>

This move likely signals that the Biden administration will be scrutinizing independent contractor relationships more carefully. It will likely do so with an eye toward classifying more workers as employees rather than contractors. In fact, as a candidate for president in 2020, Biden pledged to establish a federal standard for work classification similar to the ABC test which was recently adopted in California. While we'll cover the changes in legislation regarding worker classification in more detail in a future post, for now you should make certain that you are taking every precaution to ensure correct classification.

<https://www.thebalancesmb.com/what-is-the-abc-test-for-independent-contractors-4586615>

### A Frequent Mistake

Studies show that between 10% and 20% employers misclassify at least one employee, and you can be penalized regardless of whether or not you did so intentionally. With misclassification happening so frequently, you should carefully scrutinize every member of your team, and make sure you have airtight employment agreements in place for every person you hire. <https://www.epi.org/publication/independent-contractor-misclassification/>

Fortunately, with the support and guidance from me, your family business lawyer, you can easily avoid these risks and stay totally compliant. That said, seeing that you can save a significant sum in labor costs by using ICs instead of employees, you may be tempted to take

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your chances and pass off some of your employees as contractors. But in doing so, you're risking serious consequences which have the potential to ruin your business.

### **How Companies Get Caught**

It's easy for the IRS to be alerted to potential misclassification. A team member can file an SS-8 form, alleging you're in violation of the law, or he or she might simply receive a 1099 and W-2 in the same year. You can also get caught if one of your team tries to claim unemployment or disability, as this can result in an audit of your business.

Plus, because there's no single test at the federal level to determine a worker's classification and varying standards between states, it can be easy to misclassify someone by mistake. Then, regardless of whether or not the misclassification was intentional, if the allegation proves valid you're potentially on the hook for paying back taxes, benefits, and hefty fines.

### **Fines, Back Payments, and Penalties**

If you misclassify an employee, you can face fines from the DOL, IRS, and state agencies that can total millions of dollars. Moreover, you can be held responsible for paying back taxes and interest on employee wages, along with FICA taxes that weren't originally withheld. Failure to make these payments can result in even more fines.

You can also be held liable for failing to pay overtime and minimum wage under the FLSA as well as under state laws. Such claims can go back as far as three years if it's found you knowingly made the misclassification. And if the IRS believes your misclassification was intentional, there's also the possibility of criminal and civil penalties.

Outside of the fines paid to state and federal agencies, if an employee is misclassified, they're eligible to claim employee benefits he or she missed out on. These can include healthcare coverage, stock options, 401(k) matches, PTO, and even unpaid break time.

Not to mention that if a worker is misclassified, the resulting audit and penalties can also seriously damage your company's reputation. Basically, even if the fines and penalties don't destroy your business, the negative media coverage might.

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### **Don't Take The Chance**

Utilizing independent contractors can give your company an edge in today's "gig economy," but if you are not careful, ICs can also be a serious liability. Consult with me, your family business lawyer for trusted advice on the latest worker classification laws in your state and for support in creating airtight independent contractor agreements that protect both your business and its intellectual property. Reach out today to schedule your appointment.

*This article is a service of Saeed & Little, LLP, Family Business Lawyer™. We offer a complete spectrum of legal services for businesses and can help you make the wisest choices on how to deal with your business throughout life and in the event of your death.*

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