

EMPLOYEE OR FREELANCE CONTRACTOR?

With the recent economic downturn, many of Singapore's Small & Medium Enterprises have, as a cost cutting measure, turned to the services of freelance contractors to meet their manpower needs instead of hiring employees.

While the use of freelance contractors do provide cost savings, it is imperative that business owners have a clear understanding of who qualifies as freelance contractors. In recent years, the Singapore Law Courts have come down hard on companies who hire "temps" or freelance contractors as a means to avoid paying employee benefits. The Courts' may not agree that your hired hand is not an "employee" but a "freelance contractor" simply on the basis of your declaration.

Why the Difference Matters?

Mischaracterizing employees as "freelance contractors" when they are really your "employees" exposes business owners to a number of significant legal liabilities and potentially damaging penalties when you fail to comply with such obligations.

For example, as an "Employer" you have legally binding statutory obligations to your employees under our labour laws; such as those relating to Workmen's Compensation; providing a safe place of work; and generally, under the Employment Act and Central Provident Fund Act.

Mischaracterization of workers as "freelance contractors" when they are in fact "employees" to avoid providing employee benefits required under our labour laws will lead to significant penalties. In fact the Employment Act and the Central Provident Fund Board Act provides its own definitions of "employee" and "employer," such that it likely includes workers excluded by other tests.

Factors in Determining Employer-Employee Relationship

In deciding whether or not an employer-employee relationship exists, the Court will examine surrounding circumstances, including the actual mechanics of the relationship and economic considerations.

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One important consideration is the degree of control over the activities of the worker. In a classic employer-employee relationship, the employee is generally obligated to follow the employer's instructions in all tasks that lead up to the final work output. Whereas in the case of a freelance contractor, the hirer's control is often limited to the scope of the project and its deliverables, while having little say over how the worker should perform each of the tasks that make up the project. The freelance contractor's obligations to the hirer are simply to ensure that the project/task is completed while the execution of tasks involved in the deliverables is left to the freelance contractor.

Simply put, the higher the degree of control over the activities of the worker, the more likely the "employer-employee" relationship exists.

Another factor the Courts have taken into consideration in determining whether an employer-employee relationship exists is the ownership of factors of production – who provides the tools (equipment, computers, software, etc) and the place for work? If these are provided by the hirer, then it is more likely that the relationship is one of employer-employee.

The third important consideration is the degree of financial control for services rendered – when is payment for services made? If payment is made upon the completion of the project/task, it is more likely to be viewed as a freelance contractor relationship. On the other hand, if payment is made on a regular periodic basis, it is more likely to be viewed as a "employee" contract.

Other considerations which the Courts have given levity to in past cases are the terms that govern the actual relationship of the parties - such as the length of the agreement, the nature of the job and services to be performed.

What Can I Do to Minimize My Liability?

While some business owners have managed to avoid legal liability through mischaracterization, others unfortunately have paid a high price for disguising their employees as freelance contractors.

The rule of thumb is simply *"If you treat the worker as an employee, so will the authorities"*.

What We Do

Business Law – We advise businesses in all stages of its life cycle - from start-up and growing it through acquisitions and restructures; to retiring from the business by selling or handing it over to the next generation. Your business too will face different funding, organizational and legal challenges as it goes through different stages of its life cycle.

Estate Planning – You have worked your whole life to establish your estate, why not take the time to protect it. A proper estate plan will protect your loved ones from having to deal with the troubles and costs involved with probate court. We make Estate Planning easy to understand. We help create a legally binding directive that helps your loved ones when it counts the most. We offer guidance to help simplify the process for your loved one. No matter the size of your estate, we provide an entire plan designed for your individual needs.

Our Approach

Our Approach is Simple

Personal. Honest. Decisive.

We provide frank, insightful analysis and practical solutions.

We don't believe in doing anything less.

The information contained here is only intended to provide general information on the subject covered. Nothing in this publication should be treated as specific professional legal advice concerning any particular business, operational or other situations with which you might be faced. Please seek professional advise before taking any action.

If you need a trusted legal advisor at hand to help you navigate the complexities of the law and to keep you safe from unsuspecting pitfalls, contact us.

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