

An age-old battle between the Internal Revenue Service and taxpayers is the one over whether someone performing services on the taxpayer's behalf is an employee or an independent contractor. The IRS favors the employee classification because companies are responsible for employment taxes; are required to withhold income taxes and the employee's share of social security taxes (FICA); and pay the employer share of FICA. On the other hand, employers prefer the independent contractor designation because none of the above applies and workers are responsible for their own taxes. An employer dealing with an independent contractor is only required to report payments exceeding \$600 annually to the independent contractor on Form 1099-MISC.

Generally, whether an individual is an employee or an independent contractor is a question of fact, and involves various considerations. Such as, does the company instruct the worker how to perform the task at hand; if assistance is needed, who does the hiring; does the worker have her own tools or other investment in her work; did the company provide any training; is the worker required to be at the work site at certain times; is the worker reimbursed for expenses; does the worker get any benefits other than a paycheck; and is there a written contract specifying the relationship. It is easy to see that the more a company controls the worker's conduct, the more likely it is that the worker is an employee and subject to tax withholding and entitled to a company FICA contribution.

Some companies are cavalier about the designation, thinking calling just about anyone an independent contractor can be established by simply having a contract that states, "the worker is an independent contractor." However, as outlined, various considerations factor into a proper classification, and employers who ignore them are proceeding at their own peril, as the IRS has become increasingly aggressive over this issue.

A new IRS form has been instituted - Form 8919 - which is entitled Uncollected Social Security and Medicare Tax on Wages. This form is directed at workers who feel they are employees, but have neither had income taxes and FICA withheld from their paychecks, nor have received an employer FICA contribution on their behalf. A primary focus of this form is whether other workers at the business who are doing essentially the same work as the "independent contractor" are classified as employees.

Perhaps more dire for companies that have been less than diligent about the "employee-independent contractor issue" is the announcement by the IRS that a new audit program is upcoming. After many years of misfiring, the IRS has finally refined its computer system to the point at which it can accurately and dependably target a matching program to find companies paying at least five workers \$25,000 or more whom are classified as independent contractors, but who do not perform services for any other business. The IRS can be expected to consider such workers to be employees and to treat the businesses employing them accordingly.

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