



LEGAL EQUESTRIAN™

EQUESTRIAN QUESTION FORUM by Lisa L. Lerch, Esq.

Our facility is growing and we need to hire additional help. I would like to hire independent contractors and not have employees. How can I make sure I don't accidentally end up with employees?

The line between an employee and an independent contractor is often blurred. It is important to properly classify your workers at the beginning of employment as their status affects whether you as an employer need to withhold income tax, social security and Medicare taxes.

The courts have determined that there are three categories the parties can look to in order to determine whether a worker is an independent contractor or an employee. These categories are behavioral control, financial control, and the relationship between the parties.

Behavioral control is a determination of whether the business has the *right* to direct and control the worker. For example if the business sets specific hours and requires that specific facilities or equipment be used for the job, the business may be exhibiting sufficient control over the worker's actions to be designated as an employer. In addition, if the business provides very extensive and detailed instructions on how, when, or where the work is to be performed or completed this may result in the finding of an employer/employee relationship. A business that provides training or requires specific company procedures to be followed may also be fostering an employer/ employee relationship.

Independent contractors will have a significant financial investment in their own venture with the ability to make a profit or sustain a loss. A worker who is not reimbursed for some or all of their business expenses may also be determined to be an independent contractor. Another determining factor is whether the worker is able to provide services for other businesses. For example, a trainer working at a barn who is only allowed to work with horses boarded on the property during specific times may be an employee, while a trainer working at a barn who is allowed to work with any horses on or off the property may be more likely determined to be an independent contractor.

Finally, the relationship of the parties can often define the status of the worker. If the business is providing the worker with benefits it will likely be determined that there is an employer/employee relationship. The best strategy for any business that wants to only utilize independent contractors with no confusion is to enter into a written contract for services clearly defining the relationship as that of a business/ independent contractor.

If a business or a worker would like a determination of status as to whether the worker is an independent contractor or an employee they should fill out IRS form SS-8 *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding* and submit it to the IRS for review.

If you would like more information on this or other topics, please feel free to visit our website or contact our office.

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