

Work Comp Roundup

Reduce Your Workers Comp Costs

3 Factors In Determining If Employee is Independent Contractor

Michael B. Stack · Monday, April 10th, 2017



A common issue in the compensability of a workers' compensation claim includes a determination of whether the injured party is an employee or independent contractor. This is important for employer stakeholders to understand as the issue is often subject to litigation.

Important Factors to Consider

The law concerning employee relationships is defined by each state or jurisdiction, which results in differing interpretations. It is important to understand the law in the jurisdiction where the claim arises or could be venued. When in doubt, always consult with an attorney.

Here are some common elements found under state workers' compensation law to consider:

1) Financial control.

This deals with issues concerning whether the employer has the right of control in the various business aspects of the relationship with the injured party. Careful inquiry and examination must include:

- How the person is reimbursed for their time. While the issuance of a 1099 tax form is key, it is not always determinative on the issue.
- How the party and employer handle unreimbursed business expenses. In all instances, a true independent contractor are more likely to have unreimbursed expenses than employees.
- The investment of the worker's time. In a true independent contractor relationship, the only investment the person will have is the actual time they spend on work.

2) Behavioral Control

This inquiry involves the understanding on what instructions the employer will give to the person performing work. Key questions that need to be asked include:

- When and where to do the work?
- What tools or equipment to use?
- What workers to hire or to assist with the work?
- Where to purchase supplies and services?
- What work a specified individual must perform?

- What order or sequence to follow?

Issues of “behavioral control” are often central to investigations in construction workers such as siders, roofers and other work that can be considered seasonal. Allowing an “independent contractor” to use company tools can be fatal to an assertion the party was not an employee.

3) Types of Business Relationships

Courts will also examine the nature of agreements—both verbal and written. This includes documents signed between the person and employer. Merely calling someone an “independent contractor” does little to avoid establishing an employee-employer relationship, and thus compensability should an injury arise. Having a written document calling someone an independent contractor can give a false sense of security and shattered hopes of defeating a claim at hearing before a compensation judge or industrial commission.

- Written contracts. Courts give little deference to what a person is described as in a written agreement. The devil is always in the details. A potential employer should not forget to memorialize the arrangement in writing. It is still an important piece of evidence.
- Insurance agreements and other fringe benefits. An employee-employer relationship can be established if the person in question receives tangible benefits beyond payment for the labor they perform. In many instances, court have declared a person to be an employee for purpose of workers’ compensation based on the payment of other benefits or perks such as pension plans, 401K contributions, vacation pay, sick pay or other forms of PTO.
- Tenure of service. The longer a person works an employer, the greater the risk there is for them to become an employee. In order to avoid this situation, the written independent contractor agreement should be for a defined period, or specific to a particular project.

Conclusions

Central to the determination of whether someone is an independent contractor revolves around issues of control. The more control a company has over an individual, the more likely they look like an employee and resulting injuries are compensable. It is important to be aware of these issues to avoid unnecessary costs in your workers' compensation program.

For additional information on workers' compensation cost containment best practices, register as a guest for our next live stream training.



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Common Workers Compensation Mistakes

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