

OLAIDE A. BANKS, CPA

BUSINESS ADVISORY ATTORNEY



AVOIDING THE IRS CRACKDOWN ON EMPLOYERS

In this brief article you will learn about three critical common law factors:

- ❖ **Behavioral:** Does the company control or have the right to control how work is done?
- ❖ **Financial:** Are the business aspects of the worker's job controlled by the company?
- ❖ **Type of Relationship:** Are there written contracts? Are employee benefits paid?

These three factors can determine whether a worker will be re-classified by the IRS as an employee, and if your business could be subject to back taxes and penalties.

KNOWLEDGE IS POWER!

3308 La Branch, Second Floor | Houston, Texas 77004 | Phone: (832) 582-8289

INTRODUCTION

As a business owner you simply do not have the luxury of learning by trial and error! The business marketplace is more competitive than any time in history and the companies that succeed and thrive are the ones that know the rules and take action.

Are you playing to win?

The average little league baseball team spends two hours each week in practice - learning the game of baseball and honing their skills. The time that these teams spend in practice increases with the age of the children and the competitiveness of the league. Little league players and coaches understand the importance of game mastery to the success of their team.

How much time do you spend learning about your business and honing your skills to become competitive and successful in your industry?

Are your professional consultants – attorneys and CPAs – regularly sharing the critical knowledge that you need to be successful in your business.

The information included in this brief article is just a small sample of the very valuable information that our clients have access to every day through our website and other electronic resources. Yet, if you were required to take the time to accumulate this information it could take valuable time away from running your business.

It is absolutely essential that you create a winning team.

According to Entrepreneur Magazine, "hiring a good lawyer is crucial to any successful business."

Our team is committed to helping business owners and entrepreneurs achieve long-term success and profitability in their business. We are business advisory attorneys focused on providing general counsel and business transaction support for our clients.

This article summarizes very technical legal issues so that they are easily understood by non-attorney readers. Reading this article is not a substitute for professional legal advice specifically tailored for your situation. After reading this article you may be prepared to ask your attorney more detailed questions about your process for classifying workers and the need for employment related legal services.

If you have any questions about this article or would like to schedule a free informational consultation, please call our office at (832) 582-8289. Please reference this article when you ask to schedule your free informational consultation with Olaide Banks.

AVOIDING THE IRS CRACKDOWN ON EMPLOYERS

One of the ways that some companies control their costs and stay flexible during turbulent economic times is to hire independent contractors.

Generally speaking, independent contractors don't receive health insurance benefits, workers compensation coverage, 401(k) retirement contributions and most other benefits that employees typically receive. Businesses also don't have to contribute the "employer's portion" of Social Security and Medicare.

It is sometimes easier to terminate the services of independent contractors as they typically work until a project is completed or under the very specific terms of a contract. In "at-will" employment states like Texas, this is less of a factor, but in some other States employers have much less leeway in terminating employees.

Some individuals prefer to work as independent contractors because they feel less constrained or bound to a particular employer and they can also deduct more of their expenses for tax purposes.

The IRS is concerned about situations where employers classify individuals as independent contractors when they really should be classified as employees. In some situations state workforce agencies are even more aggressive than the IRS in going after business. This often occurs when an individual, who was classified and paid as independent contractor, files for unemployment benefits. The state agency will typically open an investigation into the businesses employment practices which can be costly and result in severe fines.

This is usually where the trouble begins. If the IRS or a state agency finds that your company has been treating workers as independent contractors when they should have been treated as employees, then they will go after not only the taxes and benefits that should have been contributed, but also penalties. In some situations the penalties may be more than the taxes.

Below are the common law factors considered by the IRS and some states:

Behavioral: Does the company control or have the right to control what the worker does and how the worker does his or her job?

Financial: Are the business aspects of the worker's job controlled by the payer?

Type of Relationship: Are there written contracts or employee type benefits? Will the relationship continue and is the work performed a key aspect of the business?

The issue is control. If the IRS or state employment agency finds that the employer is controlling the manner in which the worker is doing their job then they will likely find that the worker is an employee and not an independent contractor.

One of the things that the IRS looks at is the existence of a written contract. The independent contractor's contract must have some very specific language and it must be understood and agreed upon by all the parties.