

Are You Hiring a Sub or an Employee? That is an Important Question

Today, more than ever, employers are in daily danger of being sued because someone they classified as a subcontractor gets injured and alleges that they were INSTEAD their employee. It can get ugly fast.

So, if you intend to hire a subcontractor – how do you know if the court (and the audit department for your workers comp company) will see them as a true sub and not as an employee.

It really boils down to how much CONTROL the employer has over a person. There is a test. And to safeguard oneself, it is extremely important that employers pay careful attention to the **17 Factor Test**.

If control can be demonstrated in **ANY** of these 17 areas, it's probable that the governing authority will deem there is an employee/employer relationship.

- 1) **Instructions** – Is the person required to comply with instructions about when, where, and how the work is to be done? If a person is required to comply with instructions as to when and how to perform the work, that person is generally considered an employee.
- 2) **Training** – Is the person provided training? Training typically points to employee status, since it indicates that the employer wants the services to be performed in a particular manner and is exerting considerable control.
- 3) **Integration** – Are the services for the operations of the company? The more integrated the individual's task, the more likely the company has control – making the individual an employee.
- 4) **Hiring, Supervising, and Paying Assistants** – Does the company hire, supervise, or pay assistants to help the person? If the company controls these activities, employee status is indicated.
- 5) **Set Hours of Work** – Does the company set the work schedule? If the company can set specific work hours when the individual is on the job, the individual is most likely an employee.
- 6) **Full Time Required** – Does the person devote his/her full work time to the company? If the company requires an individual to devote full time to the business, that individual will be considered an employee.

- 7) **Location of Work** – Is the work performed at the company’s place of business or at specific places designated by the company? Control is the key word. Control over the place of work – on company premises or a site determined by the company – indicates an employer/employee relationship.
- 8) **Order or Sequence of Work** – Does the company direct the sequence of the work performed? If employer can set the sequence in which services are to be performed, then control is being exercised – and the individual providing services is an employee.
- 9) **Payment by Hour, Week, or Month** – Is the person paid hourly, weekly, or monthly (as opposed to by the job?) An independent contractor is normally paid by the job or on a commission basis, rather than on a schedule or by a guaranteed amount.
- 10) **Payment of Business and/or Traveling Expense** – Does the company reimburse the person for business or travel expenses? The fact that the employer will pay for an individual’s work-related expenses is indicative of control – and employee status.
- 11) **Tools and Materials** – Does the company supply materials or tools to the person? Providing tools and materials to an individual suggests that a company is also exercising control.
- 12) **Significant Investment** – Does the person have equipment and facilities to perform services? If an individual has significant personal investment in facilities or equipment that person is likely to be an independent contractor.
- 13) **Profit or Loss Potential** – Is there an exposure to loss or the potential of profit for the individual? A person who is in a position to realize a profit or suffer a loss as a result of the services provided is more likely an independent contractor.
- 14) **Working for More Than One Firm** – Does the person work exclusively for the company? If an individual works for more than one company at the same time, the person is normally an independent contractor.
- 15) **Making Service Available to the General Public** – Does the individual in question make his/her service available to the public at large? Advertising to the general public the availability to perform a particular service normally indicates an independent contractor.
- 16) **Right to Discharge** – Can the worker be dismissed for reasons other than non-performance of contract specifications? The right to discharge an individual is clearly an act of control and is indicative of an employer/employee relationship.

- 17) **Right to Terminate** – Can the person terminate his relationship with the company without liability for failure to complete the job? Employees can usually terminate the relationship with the employer at any time without incurring any liability. An independent contractor normally has obligations to complete specific jobs or a legal obligation to satisfactorily perform a particular service.

About KHT Insurance

KHT Insurance is an independent insurance agency specializing in business risk management, and has the needs of their clients since 1907. Their licensed insurance agents on staff are dedicated to educating and protecting their clients from financial disaster.

You can reach them at:

Ph: (817) 336-2721 or (800) 814-6470 E-mail: info@khtinsurance.com