Northern Utah Human Resource Association

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NUHRA Newsletter

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Inside This Issue

President's Address

Hello, NUHRA Members!

We are looking forward to the Utah Crossroads Conference on September 22nd and 23rd which is right around the corner!

www.crossroadsconference.org

There are lots of great speakers with interesting topics that will be beneficial to everyone working in the HR field. Hope to see you all there!

NUHRA will be having our next regular meeting at Jeremiah's on October 15th. We will be hearing from Joe Tate with GBS on Current Legal Challenges. It will be good to be together again after a couple of months away.

We will also recap the Golf Tournament and chat a bit about the State Conference. Looking forward to seeing the familiar faces as well as the few new ones in October.

We will also be voting in the NUHRA Board in October as well. If you are interested in being on the board or helping out in some way, please reach out to me or another board member this month. We are looking forward to a great fall and getting set for 2016! Hope to see you at the Crossroads Conference, but if not, let's catch up at the October meeting!

Veronica Akers, PHR
NUHRA Chapter President

IRS Reminder: Your contractors have to pass this test, too. By Christian S.
http://www.hrmorning.com/irs-employers-contractors-must-pass-our-test/

Earlier this summer, the DOL issued a statement that most thought laid to rest any argument as to which independent contractor classification test employers should follow. But since then, the IRS has essentially said, "Not so fast."

On July 15, 2015, the DOL published an Administrator's Interpretation letter, penned by DOL Administrator David Weil on how employers should distinguish between employees and contractors and classify accordingly.

To cut to the chase, Weil said employers and courts should use the DOL's six-factor "economic realities" test to determine whether someone is a true independent contractor or not.

In a nutshell, the test is designed to measure a person's "economic dependence" on a single business. The greater a person's dependence on that business, the more likely it is that person's an employee.

The six factors of a person's working relationship with a business that are to be evaluated under the test: The extent to which the work performed is an integral part of the employer's business

- The worker's opportunity for profit or loss depending on his or her managerial skill
- The extent of the relative investments of the employer and the worker
- Whether the work performed requires special skills and initiative
- The permanency of the relationship, and
- The degree of control exercised or retained by the employer.

Weil said no single factor is determinative of an employee's classification. Instead, all of the factors must be looked at on the whole.

The point of the letter was to help clear up confusion when it comes to how employers are to evaluate employee classifications — something every employer can appreciate.

What the IRS had to say

Unfortunately, the IRS had other thoughts. A month after the DOL issued its interpretation letter the IRS posted a fact sheet on its website entitled Payments to Independent Contractors.

It makes no mention of the DOL's "economic realities test," but it does point out what it calls "Common Law Rules" for determining whether someone's an independent contractor.

They are as follows (taken straight from IRS.gov):

- Behavioral: Does the business owner 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 business owner? (these include things like how the worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
- Type of Relationship: Are there written contracts or employee type benefits such as pension plan, insurance or vacation pay? Will the relationship continue and is the work performed a key aspect of the business?

Answer "yes" to any of these questions, and you've likely got an employee on your hands, according to the IRS.

What does this mean for employers?

Despite the DOL's best efforts to create a singular test for determining independent contractor classifications, the IRS here appears to have undermined the agency's efforts — although likely not intentionally.

Bottom line: Employers still have two tests with which their worker classifications have to pass muster.

Granted, both the DOL and IRS tests are similar in how they measure work relationships. But they do contain subtle variations.

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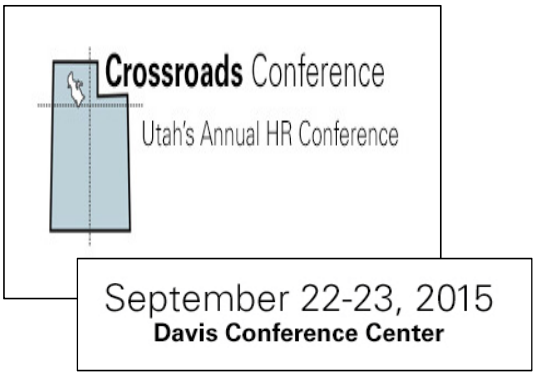
HR TIP:

"I am convinced that nothing we do is more important than hiring and developing people. At the end of the day you bet on people, not on strategies."

-Lawrence Bossidy, Ge



Upcoming Events

NUHRA 2015 Calendar

Crossroad Conference September 22-23, 2015 Davis Conference Center	**Jeremiah's** October 15, 2015 11:30 – 1:00 p.m. Current Legal Challenges	**Jeremiah's** November 19, 2015 11:30 – 1:00 p.m. Diversity/Transgender Employees in Workplace.

see calendar items in detail:

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The best course of action: Run your classifications through both tests. If they pass, great. If not, change work relationships so they do — or simply reclassify the workers in question as employees and compensate them as employees (with tax deductions, benefits, etc.).

This DOL v. IRS issue is an ongoing one that our sister website HR Benefits Alert hashed out in an in-depth — but easy to read — look at the dangers of using independent contractors. Anyone using ICs would be well advised to check it out.

DOL: 'Most workers are employees'

There's one more thing you should know when it comes to the feds and courts, and independent contractor usage: Anyone scrutinizing your classifications is likely going to go into the process assuming the person is an employee, and your classification determinations will have to convince them otherwise.

In other words: You're already behind the eight ball before an audit or investigation begins.

Weil, in his interpretation letter, even made it a point to say this:

"In sum, most workers are employees under the FLSA's broad definitions. The very broad definition of employment under the FLSA as 'to suffer or permit to work' and the Act's intended expansive coverage for workers must be considered when applying the economic realities factors to determine whether a worker is an employee or an independent contractor."

Translation: It's hard to justify that someone you're paying to perform work isn't an employee of yours.

Employment law attorney Heather Bussing, does a nice job of explaining why the feds seem so hell-bent on sniffing out worker misclassification and are so inclined to assume many ICs are actually employees. Here's a hint: It has to do with payroll taxes.