

Who's the Boss? Update on Employee vs. Contractor & Joint Employer Status

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Who's the Boss?



Now Who's the Boss, When the Worker Is . . . ?

- Contingent worker
- Independent contractor
- Company contractor/freelance business owner
- Moonlighter
- Diversified worker
- Free agent/freelancer
- On call
- Agency supplied
- Self-employed
- Part-time
- Leased
- Temporary
- Seasonal



Rise of the Contingent Workforce

- 2015 Kelly Services Free Agent Survey says 31% of U.S. workforce self IDs as free agent
- 2010 – U.S. GAO says 40.4% of U.S. workforce is contingent
- 2005 – GAO # is 30.6%



Why Be a Contractor?

Benefits to Employer

- Don't have to provide employee benefits
- Don't have to withhold/remit taxes
- No "hits" to UI chargeback account when work ends
- Don't have to pay min. wage or overtime
- Don't have to add to headcount/budget; flexible staffing
- Don't have to worry about liability under many employment laws; no union representation

Benefits to Worker

- Flexibility – can work when I want to (or not)
- Development – can learn from many different workplaces
- Money – base pay often higher since employer has no employee benefits cost; more cash up front since no tax withheld from payment
- Pride – I own my own business

Not So Fast . . .

Employer Concerns

- Liability arising from subsequent determination that the worker was really an employee, via agency, individual and class actions seeking
 - Unpaid overtime
 - Failure to pay FLSA salary
 - Benefits
 - Unpaid taxes

Worker Concerns

- No protection under most employment laws
- Low to no benefits
 - Health care
 - Retirement saving
- Inconsistent income flow
- Low pay; 33% below poverty level, per GAO rpt
- High reliance on public assistance; 11.1% receive SNAP benefits

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