

Year of the Independent Contractor?

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2011 is supposed to ramp up business and investment activity, bringing welcome relief to the economic doldrums so many have faced. M&A advisors are among the many hoping it's true. In some circles, 2010 was called the year of the independent contractor, mostly it would seem, because it appeared likely that the President and Congress were focusing attention on the mercurial line between independent contractors and employees. There is no question that there are huge dollars at stake. As it turned out, of course, Congress had even larger issues to address in 2010, including the estate tax, Bush-era tax cuts and many extenders. And more generally, the economy required lots more attention.

Thus, the contractor-versus-employee reforms that once seemed likely languished. But they could certainly resurface. In that light, Robert Wood's *LEGAL GUIDE TO INDEPENDENT CONTRACTOR STATUS* (Tax Institute 5th ed. 2010) comes along at a perfect time. It covers the thorny and ever-present legal issues affecting independent contractors, employees and the companies that hire them. I am most impressed with this publication.

Plain English

It is not only legally thorough but perhaps most importantly, it is written in plain English. It is easily understandable and written in a way that provides concrete examples that make it applicable to real-life situations lawyers have to deal with on a daily basis.

Yet despite the approachability of the book, its legal analysis is first rate. This treatise accurately and completely explains the often ambiguous law in this area and provides practical insight.

This treatise does a particularly good job in explaining how several different laws define who is and is not an independent contractor. It provides practical guidance on a full range of examples ranging from teachers to hair stylists to nurses and salespersons. It spells out in concrete terms how to evaluate a particular position and determine whether it will likely be found to be a contractor or employee. It applies the various tests that are utilized in determining independent contractor status and helps readers to easily understand where the line

is drawn in situations that are often quite gray and ambiguous.

Big Tax Impact

This book also does a terrific job of explaining how the tax laws impact independent contractor status. It provides practical insight on all of the various federal and state tax requirements and the rules on what needs to be reported in the case of both employees and independent contractors. This book comprehensively outlines the potential liability for misclassification of independent contractor status. Moreover, it provides practical insight on what to do when an IRS audit or legal challenge contests the way you have classified a particular position.

More Than Taxes

The independent contractor-versus-employee characterization question goes far beyond tax issues, of course. It extends to labor and employment laws, pension laws, workers' compensation and unemployment, and much more. In fact, regarding civil liability, this treatise provides solid insight on how an employer can be held liable for acts of its employees

and contractors. It offers good information on the kinds of legal issues that typically arise and when an enterprise might be held legally responsible for the actions of an employee as compared with a truly independent contractor.

Conclusion

Finally, this treatise provides terrific guidance on how to effectively draft an independent contractor agreement that will withstand a legal challenge. It lays out in concrete terms what needs to be contained in such an agreement and how that relationship needs to be structured. I strongly encourage practitioners to use this book. Take advantage of its insight when structuring an independent contractor relationship.

A founding partner with Curiale Hirschfeld Kraemer LLP, in San Francisco, Mr. Hirschfeld is also Chief Executive Officer of the Employment Law Alliance, the world's largest network of labor and employment lawyers. Robert W. Wood's book, LEGAL GUIDE TO INDEPENDENT CONTRACTOR STATUS (5th ed. 2010), available at www.taxinstitute.com. Compression bound, including CD, 1,034 pages, \$399 (sales tax may apply).