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PayDay

A major focus of recent IRS audits is whether an employer has correctly classified its workers as employees or independent contractors. The IRS is concerned that business owners are escaping payroll taxes and tax withholding requirements by treating workers as "1099 contractors" when they instead should be "on the payroll" as employees.

IF the IRS successfully reclassifies a worker's status from contractor to employee, the employer then owes back payroll taxes, withholding taxes and various statutory penalties.

The IRS primarily looks at the following 3 "categories" (each of which has "sub-categories") to determine the worker's classification as an employee or independent contractor:

√ Does the business/organization exercise **"behavioral control"** over the worker? Who's "calling the shots"?;

√ Does the business/organization exercise **"financial control"** over the worker? Can the worker lose money, or instead is guaranteed earnings for services? Does the worker invest money or capital in the relationship? Is the worker paid by the job, or by the hour?; and

√ **How do the parties themselves view their relationship?** Does the business view the worker as an "employee" who follows instruction as to when and how to perform a job?

A written agreement which states that the worker is an independent contractor and responsible for his/her own taxes has very little impact on whether the worker is an employee or contractor. Similarly, a part-time "casual labor" worker does not mean they are a "1099 contractor" - in many cases they are part-time employees who should be "on the payroll".

If you are not sure whether a worker is an employee or contractor, an AccuPay "CPP/CPA team" would be pleased to help you and your tax legal advisors make the correct worker classification decision - and our advisory teams are available at no charge as a "value - added" service to AccuPay's clients!

PayDay is an email communication of payroll news, legal updates and tax considerations intended to inform clients and colleagues of AccuPay about current payroll issues and planning techniques. You should consult with your CPA or tax advisor before implementing any ideas, comments or planning techniques.

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