



STANISLAWSKI & COMPANY, INC.

A Certified Public Accounting and Business Consulting Firm

January - February 2012

RE: Independent Contractors vs. Employees

Dear Friends of Stanislawski & Company, Inc.:

We hope your new year is off to a great start! In this newsletter, we are addressing the issue of hiring independent contractors versus employees. For businesses, having a person work as an independent contractor saves a lot of money in terms of taxes, benefits, compliance with labor laws, etc. Because governments lose so much when someone works as a contractor rather than an employee, rules have been set-up to determine who is independent, and who is really an employee, and their fines for misclassification are hefty. California's Employment Development Department and the I.R.S. are the main entities concerned with the difference. But individuals have been known to change their minds when unemployment benefits depend on their classification, and both the federal Department of Labor and California's Labor Commission can get involved.

Basically, the rules boil down to how much control the hiring person has over the hired person. Think of your auto mechanic - you hire him to fix a problem. He uses his own space and tools, and he tells you how he's going to fix the problem, how much you are going to pay him, and in what time frame. He also works on many other cars.

Now think of a cashier - he shows up at his employer's space at an agreed-upon time, uses the employer's tools (including computers), only works for that employer during that time, and generally does the work he's told to do.

The mechanic is clearly an independent contractor, and you have no obligation to him other than to pay him at the end. The cashier is clearly an employee. The more your hired people resemble the cashier, the more likely government agencies are to classify them as employees, and impose penalties if you didn't treat them as employees. The more your hired people resemble the mechanic, the more likely your treatment of them as independent contractors will be allowed.

Please keep in mind that an independent contractor versus an employee is a legal question, and in all cases we strongly recommend legal counsel. For your reference, following are some examples of what information and documentation is needed to sustain your treatment:

- Invoices on the independent contractor's letterhead or equivalent.
- The independent contractor's business card.
- A Yellow Page or business section listing for the independent contractor.
- An executed contract signed by the independent contractor.
- A list of the independent contractor's other customers.
- 1099's sent to the independent contractor each year as required.
- A copy of the trade or professional license (if one is required) for the type of work being performed by the independent contractor.

If you have any questions regarding the above considerations, please feel free to contact me.

We want to take this opportunity to thank you for allowing Stanislawski & Company, Inc. to be of service to you. And many thanks to everyone who has referred clients to us! It's a great demonstration of your trust and confidence in us!

Business is great at Stanislawski & Company, Inc. and we are looking for more.

Sincerely,

Charles G. Stanislawski, M.B.T., C.P.A.