

Ask the Expert

Q.

It feels like the economy is improving. My company would like to hire additional help, but does not want to bear the cost of hiring regular employees until there is more economic certainty. Should we hire independent contractors rather than regular employees?



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A.

Probably not. In determining whether someone can be treated as an "independent contractor" rather than an "employee," it is the reality of the relationship that controls. This assessment is based on factors developed under state and federal law. Misclassification can result in enforcement action, government investigation and orders for payment of unemployment and worker's compensation assessments, back wages, overtime, lost benefits, fines and attorneys' fees. Under New Hampshire employment laws, individuals who perform services for pay are presumed to be employees unless the employer can show that the individuals meet certain factors that establish an independent contractor relationship. The test under New Hampshire's various employment laws and under federal law are similar. These include whether an individual has control and discretion over the means and manner of performance of the work; has control over the time the work is performed (although an agreement can be reached as to a completion schedule, range of work/maximum number of hours); is responsible for the main expenses related to work performed (office space, advertising, insurance, etc.); and supplies the principal tools and instrumentalities used in the work. Other factors include whether the service is either outside the usual course of the business for which it is being performed, or performed outside of all places of business of the enterprise for which it is performed. The more control that the employer has over when, how, and by whom the work will be performed, the less likely that the relationship will be viewed as one of independent contractor.

15th Annual BIA Golf Classic June 14 Concord Country Club



Rain date—June 15
Country Club Lane, Concord, NH

8 AM Continental breakfast and registration

9 AM Shotgun start. Network reception and lunch to follow.

1:30 PM Awards presentation and raffle

Sign up your foursome today!

\$975 for a foursome
\$250 for an individual
(limited number available)

Sponsorship opportunities are available.

Opportunities are also available to include your company's promotional items in the player gift bag and raffle.

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