

What Is This Person?

Classification of Workers and Implications

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ENERGY PASSION COMMITMENT SHIRTSLEEVES

Determining Whether A
Worker Constitutes An
Independent Contractor Or An
Employee

Factors Considered

- Will the Employer have the right to control the means and manner in which the worker will accomplish the work to be performed?

Considerations include:

- Whether the Employer will establish set work hours;
- Whether the worker will perform services on the Employer's premises; and
- Whether the worker's occupation is typically done without supervision.

Factors Considered

- Is a high level of skill and/or training required for the worker's particular occupation?
- Is the work to be performed by the worker the type of work regularly performed by the Employer's employees?
- Will the worker hire, fire, and pay his or her own employees or assistants?
- Will the worker have a continuing or semi-permanent relationship with the Employer?

Factors Considered

- Is the worker to be paid by the project rather than by the hour or by the day?
- Will the worker provide his or her own supplies, tools and place of work?
- Is the worker engaged in a distinct occupation or business? Does the worker make his or her services available to the general public?
- Do the parties intend the worker to have the status of an independent contractor?

Consequences of Misclassifying
An Employee As An Independent
Contractor

Consequences Cont.

- The Microsoft cases
- Eligibility for benefits also depends on the eligibility criteria in the plans.

Special Considerations for Public Employers

Washington Law Prohibits Public Employers From Misclassifying Workers To Avoid Providing Benefits

- RCW 49.44.160 makes it illegal for a public employer to misclassify employees.
- Misclassify means to incorrectly classify or label a long-term public employee as “temporary,” “leased,” “contract,” “seasonal,” “intermittent” or “part time” or to use a similar label that does not objectively describe the employee’s actual work experience.

When Temporary Employees Are Considered Regular Employees

- The length of employment and objective work experience governs
 - Mader v. Health Authority
 - City of Seattle
 - Joint Operating Agreements

Tips To Avoid Misclassification Problems

- Review independent contractor agreements
- Make sure independent contractors have the right to control the manner and means of accomplishing their work
- Ensure employees' labels are consistent with their actual work experiences
- Make sure temporary or seasonal employees' employment is truly temporary, will end at a defined period of time or based upon the occurrence of specific events
- Require temporary or seasonal employees to apply with each new project or assignment
- Maintain differences between the classifications of workers to emphasize their different work experiences.