



## State Governments Cracking Down on Misclassification of Employees

In these difficult economic times, states are realizing that significant tax revenue is lost each year when employers misclassify their workers as independent contractors, rather than as employees.

New Jersey has legislation which addresses improper classification, and if ruled in violation, criminal sanctions, administrative penalties, and possible debarments from public contracts could result.

[Click here](#) to review the guidelines provided by the IRS to determine if a worker should be classified as an employee or as an independent contractor. The courts have considered many facts in deciding the appropriate classification, and these relevant facts fall into three main categories: **behavioral control, financial control, and relationship of the parties**. It is important to consider all of the facts, as no single fact will provide the answer.

In general, if the following facts apply, then the worker should be classified as an employee:

- **Behavioral Control:** These facts show whether the business has a right to direct and control how the worker does the work.
  - *Instructions* - The worker receives extensive instructions on how work is to be done.
  - *Training* - The business provides the worker with training about required procedures and methods, indicating that the work needs to be done in a certain way.
- **Financial Control:** These facts show whether the business has a right to direct or control the business part of the work.
  - *Significant Investment* - The worker does not have a significant financial investment in the work.
  - *Expenses* - The worker is typically reimbursed for business-related expenses.
  - *Profit or Loss* - The worker does not realize a profit or incur a loss.
- **Relationship of the Parties:** These facts illustrate how the business and the worker perceive their relationship.
  - *Employee Benefits* - The worker receives benefits such as insurance, retirement savings, paid time off, etc.
  - *Written Contracts* - If it is difficult to determine classification based on the above factors, then a written contract is recommended to further clarify the relationship between the business and the worker and the professional expectations.

Contact Jeff Green, PROXUS Principal, at 215-654-9140 ext. #102 or [jgreen@proxushr.com](mailto:jgreen@proxushr.com), or your PROXUS representative if you are unsure how to classify someone who is doing work for your business, or need assistance in converting individuals to employee status. PROXUS' team of experienced human resources and payroll professionals are available to provide you with the necessary guidance every step of the way.

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