



### **Defining the Exact Standards of Employee Classification in Today's Labor Market**

This month's topic lends itself to a timely discussion regarding employee classification. Many businesses have successfully met the challenges brought about by the pandemic two years ago, and have adopted new practices to remain productive. Much has been written about the need for additional firewall protection for a company's IT infrastructure, as well as reviewing HR policies and standards. Both of these concerns are a natural segue into addressing the criteria for employee classification.

Mr. John E. Dustin, President of J.E.D. Insurance and Financial Services Agency, Inc. of Foxborough, Massachusetts, offers some important points that business owners must give attention to. "When someone develops a relationship with your customers, uses your tools, your supplies, are working at your business' location, and doing work on your behalf, they are not a 1099 independent contractor. They are your W-2 employee. The business owner is subject to workers comp and paying benefits. They have to pay FICA (Federal Insurance Contributions Act) and FUTA (Federal Unemployment Tax Act)," he emphatically states.

The Workers Compensation Rating Bureau and Department of Industrial Accidents laws in Massachusetts, he goes on to explain, "Are very clear that even an uninsured subcontractor that's working on your behalf is your responsibility." Now, with the aforementioned pandemic-imposed considerations and costs to factor in and remote work inherently becoming less formal, John anticipates a trend among startups justifying they keep people in a 1099 status, simply because office space continues to remain empty, in many cases. But, John counters that notion. "There are very strict rules against doing that. In fact, years ago, there was something called the 20-point rule."

The 20-point rule isn't as commonly referred to anymore, but both the Department of Industrial Accidents and the Department of Labor adhered to its criteria—some of which is based on the 20-point rule. “Both of these organizations frowned upon misclassifying people as independents when they're truly employees. Companies today need to take a hard look at their human resources policies and procedures as to how they're really paying people,” John advises.

By way of example, he says that if someone is truly an independent contractor, there needs to be an arm's length transaction, and there needs to be insurance and a contract with appropriate insurance requirements and indemnification language. And the independent contractor should be self-directed in the work and service they are providing to the company. This is the very difference between a remote worker and a true 1099, independent contractor. Also worth noting, often an independent contractor is a professional providing their own field of expertise to the company. This could be an outsourced graphic designer, social media manager, or a bookkeeper, to name a few. An attorney who is on retainer is also not considered a company employee, and is classified as a 1099. The same applies to a certified public accountant.

One of the biggest motives for businesses wanting to label employees as independent contractors is to save on health and dental insurance. Even though this provision isn't heavily policed, there are expectations to the fair share contribution with respect to health insurance. As to why this is important, John relates, “If you have over eleven employees and can cite that, there's ERISA (Employee Retirement Income Security Act), which has always allowed disability discrimination for executive offices and class one employees. Companies put themselves at risk, because if someone is classified as an independent contractor and then they make use of the Family Medical Leave Act (FMLA), and later find out that they were not considered to be an employee; or worse, have a workers compensation incident and they are not covered, it quickly escalates into a ‘he said, she said’ dispute, which can become litigious and costly.”

As a result of this new landscape of remote workers companies find themselves in, John predicts that a new wave of employment law cases will surface, defaulting to classifying people as employees. For business owners looking to cut corners on FICA and FUTA, workers comp, and offering benefits, this will not be a cost-saving measure for them in the long run. Should startups and newer businesses be confused about how to accurately classify people as employees, John recommends that the business owners take a very careful look at the criteria provided by the [Department of Industrial Accidents](#).

Based on the foregoing, employee classification is not a minor consideration. John concludes, “Business owners really need to treat employees as employees. It has to be very clear, and it has to be in writing.”

#employeeclassification #labormarket #pandemic #firewallprotection #itinfrastructure  
#hrpolicies #standards #yourcustomers #yourtools #yoursupplies #businesslocation #1099  
#employee #workerscomp #payingbenefits #fica #futa #officespace #20pointrule #selfdirected  
#outsourced #graphicdesigner #socialmediamanager #bookkeeper #attorney  
#healtanddentalinsurance #elevenemployees #erisa #fmla #hesaidshesaid