

Rethinking Staffing Models

Independent Contractors or Employees



Gatlinburg, TN – 02/26/20

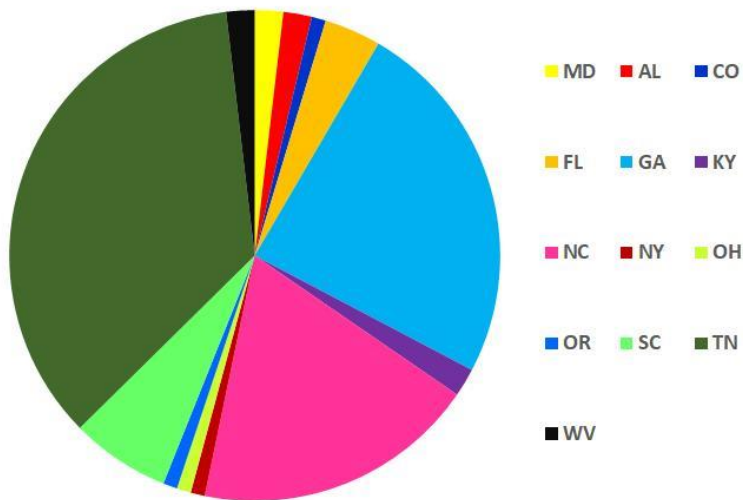


Sue Jones, Owner
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VRM Intel Live! Gatlinburg Attendees by State



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Staffing Today Requires a Contingent Workforce



Independent
contractors



Temporary
employees



Seasonal
employees



Leased workers



Interns

Determining Independent Contractor (IC) Status

Internal Revenue Service

- Common Factor Test

Department of Labor

- Economic Reality Test (FLSA)

State Laws

- Many states have laws that more specifically define an IC status trumping Federal Law





Tennessee Adopts 20 Factor Test for IC's 1/1/2020

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IRS Common Factor Test

The 20 Factor Test is
Based On:

- Behavioral Control
- Financial Control
- Type of Relationship



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DOL– Economic Reality Test (FLSA) 7 Factors

1. Who owns and controls the place where the workers work and equipment they use?
2. How much and what kinds of control does the company have over the work?
3. Can workers make more profit or lose money depending on how they do the job?
4. Is independent initiative, judgment and planning necessary for the success of their job?
5. How much is the work a part of the company's business?
6. How permanent is the relationship with the hiring manager?
7. How dependent is the worker on the employer for continued work?



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2019 Top Wage and Hour Settlements

\$100 million: *Van Dusen v. Swift Transportation Co.*, D. Ariz., No. 10-CV-899 (April 18, 2019). The court granted preliminary approval to settle claims of drivers who asserted they were misclassified as independent contractors and deprived of proper wages and reimburse

\$22.5 million: *Alfred v. Pepperidge Farm Inc.*, C.D. Calif., No. 14-CV-7086 (Oct. 10, 2019). The court granted final approval to settle a class action brought by product distributors in three states who alleged they were denied employment benefits since they were misclassified as independent contractors.

\$20 million: *O'Connor v. Uber Technologies*, N.D. Calif., No. 13-CV-3826 (Aug. 29, 2019). The parties sought settlement approval in an action alleging the ride-hailing company classified drivers as independent contractors to avoid paying them a minimum wage and providing benefits.

\$16.5 million: *Carter v. XPO Logistics Inc.*, N.D. Calif., No. 16-CV-1231 (Oct. 18, 2019). The court granted final approval to settle minimum-wage and overtime claims involving allegations of misclassifying delivery drivers.

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Employing Independent Contractors

Advantages

- Specialized skills “as needed”
- Operational flexibility
- Decreases long term obligations
- No federal, state and local employer taxes or benefits
- No unemployment
- No workers compensation insurance

Disadvantages

- Back wages
- Overtime
- Benefits
- Discrimination
- Leave laws (Sick, FMLA)
- Civil penalties
- Attorney’s fees

Breakout Group Discussion

- How Do Independent Contractors Impact Your Cleanliness Scores?
- How Do Independent Contractors Impact Your Guest Reviews?
- How Do Independent Contractors Impact Your P&L?

How Do Independent Contractors Impact Your Cleanliness Scores?

Advantages

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Disadvantages

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How Do Independent Contractors Impact Your Guest Reviews?

Advantages

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Disadvantages

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How Do Independent Contractors Impact Your P&L?

Advantages

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Disadvantages

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Wrap Up and Takeaways

- Re-evaluate your staffing model and resources
- Carefully review the status of your IC's from both the IRS and DOL standpoint
- Consider making your Housekeeping Department a Profit Center
- You will never run "afoul" of the IRS, DOL or State Law by hiring staff as hourly non-exempt employees

Questions? Contact us!



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