

Your BUSINESS

Spring • New York

Is my worker an employee and who wants to know?

You wouldn't think it would be so hard to define an employee, but it turns out that there is more than one definition. It all depends on who wants to classify them and for what purpose. For example, the Internal Revenue Service has a 20-factor criteria, the Fair Labor Standards Act has a six-factor criteria, the Age Discrimination in Employment Act has a hybrid "control" and "economic realities" test; and various states have evolved their own case law with respect to eligibility for workers' compensation benefits. The IRS may deem a worker an independent contractor for purposes of taxation, while a state workers' compensation judge may declare the same worker an employee eligible for benefits.

Throughout the country, interest has been renewed in the misclassification of workers by employers for the purpose of avoiding expenses. Efforts are underway to understand the problem and crack down on abuse. Now is the time to make sure your business is in compliance with the law. Simply designating a worker an independent contractor does not make it so.

New York courts. New York Workers' Compensation Law Section 3201(2)(b) sets forth the following assumption: "In any proceeding for the determination of a claim for compensation, the fact that a worker is designated as an independent contractor shall not be conclusive evidence of such status." Chapter 11 of the New York Workers' Compensation Law provides that "the fact that a worker is designated as an independent contractor shall not be conclusive evidence of such status." Chapter ...

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Courts have consistently held that the existence of an employer-employee relationship is a factual question. The Workers' Compensation Board's decision to resolve and its finding of fact will be upheld if supported by substantial evidence (see *Topper v. Al Cohen's Bakery*, *Jhoda v. Mauser Serv and Semus v. University of Rochester*). Relevant factors the court considers are the right to control

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Protect your business with flood insurance

Just a few inches of water from a flood can cause tens of thousands of dollars in damage. Did you know business owners insurance policies do not offer protection against far-too-common flood losses? Floods are the most common natural disaster in the U.S. With all the snow we receive in the Northeast, the arrival of spring could bring some serious flooding in our area. Over the past 10 years, the average flood claim has amounted to more than \$35,000. Flood insurance is the best way to protect your business from a potentially devastating financial loss. It will cover physical damage to your property and possessions.

The National Flood Insurance Program, a federal program, offers flood insurance, which can be purchased through most insurance companies. Flood insurance separate from your business insurance. Although flood insurance is required by lenders if your business is in a moderate-to-low risk flood area, it is still available and strongly recommended.

Typically, flood insurance has a 30-day waiting period before coverage goes into effect. If you are concerned that your business may be at risk for flood damage, give our office a call today, before it's too late! Unfortunately, too many business owners find out too late that their insurance policy does not cover flooding. As your professional insurance agent, we want to remind you that the time to purchase flood insurance is sooner rather than later.

Supporting out-of-office activities

Suppose some of your employees approach you about supporting a company softball team. They have come to you, the business owner, for a little financial assistance in purchasing some bats, uniforms (T-shirts), hats and balls. You don't see a problem with it; maybe you'll get a little advertising out of it, so you go ahead and write the check.

Wait a second: Did you just expose your business to something you shouldn't have? Numerous court cases have looked at this with perspectives ranging from liability to workers' compensation. There are several points to consider:

Is participation mandatory? Are employees expected to participate? If you are in the clear. To be sure, you should ask your employees to participate in the activity, stating that they are playing for fun, not for work. If they are injured, it's not time and that these activities have nothing to do with their work.

Stay away from home. The location of the game is important. If the game is played on the employers' property—even if it's a pick-up game during lunch—it's probably going to be covered by workers' compensation.

Does the company stand to gain anything? This aspect tends to stand out above the rest. You can be assured that if it can be proven that your company stood to gain from your team's or an individual's performance, participants, if injured, will be granted workers' compensation.

If you innocently sponsor a team of employees who want to bowl, play softball, etc., you are in the clear. To be sure, you should ask your employees to participate in the activity, stating that they are playing for fun, not for work. If they are injured, it's not time and that these activities have nothing to do with their work.





Long-term disability coverage

Every second, a disabling injury occurs. That's 60 injuries per minute, more than 85,000 per day. In fact, according to the Council for Disability Awareness, one-in-five employees will miss work for a year due to some type of disability.

That's why you should consider providing long-term disability coverage for your employees. Long-term disability refers to income insurance that provides benefits beyond the term of short-term disability benefits. While short-term disability provides assistance to employees for an average of six months, the average long-term absence can last two and a half years. Without it, your employees may have no source of income during their rehabilitation. Unfortunately, according to the U.S. Bureau of Labor Statistics, just 33 percent of workers have access to long-term disability coverage.

Providing long-term disability protection can help you attract and retain top quality staff, while reducing the stress levels of your workers. Here are some

things to take into account when contemplating coverage.

Social Security Act. Social Security Act of 1935 provides a safety net for your employees, but will not guarantee their same standard of living pre-disability. If your employee is unable to work at all or cannot do any other job, they may be expected to work; no benefits beyond the term of short-term disability are allowed. Social Security is intended as a safety net for your employees, but will not guarantee their same standard of living pre-disability.

ERISA may affect any plan you set up. The Employee Retirement Income Security Act of 1974 is a federal law that sets minimum standards for voluntarily established pension and health plans. You will be required to provide specific plan information to participants and to establish an appropriate grievance and appeals process.

Different states have different requirements. Depending on where your

employees are located, you may or may not be required to provide disability benefits to your employees. In New Jersey and New York state, businesses must offer disability benefits to workers for up to 26 weeks.

Know what's available. In order to make the best decision about what plans to offer your employees, do your research and know what's out there. Variations on disability coverage exist, including amount and types of benefits, the types of medical and other information that might be required and eligibility for participation in the plan. While most plans cover 50 to 70 percent of monthly salary, be sure you know exactly what protection is being provided.

If you are considering offering long-term disability coverage as part of your employee benefits package, contact our agency and we can help you find the best plan to meet your needs.

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the work, the method of payment, the party that furnishes the equipment, the right to discharge and the relative nature of the work. However, no single factor is decisive (see *Topper v. Al Cohen's Bakery*, *Gallagher v. Houlihan Lawrence Real Estate* and *Vinciguerra v. Carvel Corp.*).

The dilemma. So, if you never really know for sure whether a worker is an employee until the judge decides the case, how can you classify workers in advance? If you have a workers' compensation policy, any injured worker who is determined by a judge to be an employee will be covered without question. It merely becomes a matter of charging the appropriate premium for these workers. If you don't have a policy, then there will be benefit expenses and uninsured penalties to pay that could potentially devastate your business.

WCB Guidance. Employees are not without guidance.

Compensation Board when classifying workers as employees or independent contractors. On their Web site at www.wcb.state.ny.us, under the link for "Employers/Businesses," you will find answers to questions like "Who is an employee?" and "Who is an independent contractor?" You also will find a section that provides examples of relationships where coverage is required and examples where coverage is not required.

Our part. We don't want you to be surprised by a policy audit where premium for workers was not anticipated, nor do we want you to incur unnecessary fines due to being late for a few moments and not showing up on time. Please visit our Web site and give us a call. We are providing the guidance you need, and, if insured, are helping you manage the premium you are charged.

News from Insurance is a relationship

Insurance should be more than just an annual transaction. If you're going to get the best coverage you can, at a price you can afford, it needs to be a relationship. Professional, independent insurance agents offer personalized, one-on-one service. We evaluate your business' needs and circumstances, and design and implement coverage to meet your specific insurance goals. What's more, unlike one-company agencies, which only represent a single insurance company, an independent agent can shop around on your behalf and find you the best coverage at the best price.

If you have any questions on your insurance coverages, or if we can help you with your insurance needs, please call us.

