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INDEPENDENT CONTRACTOR DISPUTES

Many companies throughout the United States (and in many foreign countries) use independent contractors as well as employees in conducting their business operations. Exactly when and how you should use independent contractors can be vexing, and involves the interrelationship between various factual and legal criteria. Indeed, the applicable legal standards used in determining who is or is not an independent contractor can be dizzying. Businesses quite legitimately make use of independent contractors all the time. On the other hand, one's ability to safely contract with independent contractors must run the gauntlet of a variety of state, federal and local laws.

At Wood & Porter, we have represented clients in virtually all phases of these endeavors. We often are called upon to assist a company in evaluating, writing or revising independent contractor agreements, and/or in implementing contractor relationships into a client's workforce. Generally, such tasks involve a comprehensive review of the nature of the business and the tasks to be performed by both contractors and employees. A properly crafted independent contractor agreement, and a properly implemented relationship between company and contractor, must serve a plethora of goals.

First, it must secure independent contractor treatment for employment tax purposes, employee benefit plan purposes, and even for purposes of applicable labor and employment laws. There is no tax liability for income and employment taxes paid to an independent contractor. However, if the Internal Revenue Service or state taxing agencies recharacterize the worker from independent contractor to employee, the employer's liability can be draconian.

A properly crafted and implemented independent contractor arrangement must also preclude the *respondeat superior* liability for tort and contract liabilities that employers face with respect to the conduct of their employees. On the surface, by using independent contractors, an employing individual or company has no liability under the doctrine of *respondeat superior*. However, this liability can be imposed if the independent contractor is recharacterized as an employee.

In addition to such objectives, the company's relationship with the worker must satisfy the company's need for the goods or services which the contractor will provide. Meeting such a multiplicity of high-stakes goals is no mean feat.

Indeed, virtually no independent contractor agreement is free from liability or immune from attack. Although the same can be said for employment agreements, independent contractor agreements face a fundamental characterization question that can make their status particularly emotionally charged. These disputes are enormously hard on companies too, since they often involve an apparent setting aside of agreed-upon legal and contractual relationships, either at the behest of the workers themselves or at the insistence of governmental agencies. In either case, such recharacterization can have enormous financial consequences.

We have successfully handled the assessment, drafting and implementation of independent contractor and employment agreements, guiding companies through the multiple shoals of liabilities to the workers and the public, as well as liabilities to various governmental agencies. We have also successfully defended companies facing attacks from taxing agencies on their independent contractor arrangements.

Our founding partner, Robert W. Wood, has a national reputation as an author, practitioner, and authority on the distinction between independent contractors and employees. He has lectured and written widely on this topic, and authored the book, *Legal Guide to Independent Contractor Status*, now in its 4th Edition. In addition to consulting with companies and workers, and handling tax controversy cases over the status of workers, our firm is also often hired to consult with companies undergoing regulatory or tax agency scrutiny over the status of workers.

Moreover, Rob Wood has often served as an expert witness in civil litigation throughout the country concerning the appropriateness of worker classification. Mr. Wood's roles have included:

- Serving as an expert concerning independent contractor vs. employee distinctions in litigation against the Los Angeles Times newspaper (*Jon Robert Van Senus v. Los Angeles Times Communications and Thomas Trong Ngo*, No. 07CC04639, Superior Court Orange County).
- Serving as an expert for plaintiffs in FedEx Ground Package System, Inc. Employment Practices Litigation, Case No.: 3:05-MD-527RM (MDL 1700), Northern District of Indiana.
- Served as expert for defense on employer vs. contractor status in a medical malpractice case (*De Jong v. Greene and Banner Health*, No. CV 2006-018221, Arizona Superior Court, County of Maricopa).
- Served as an expert for the plaintiffs in a class action involving the status of drivers as independent contractors or employees (*Anthony Estrada, et al. v. RPS, Inc.*, Los Angeles County Superior Court No. BC210130).
- Declarant as to employment status of jockeys of relevance in assessing the legal status of the Jockeys' Guild (*Jockeys' Guild, Inc. et al. v. L. Wayne Gertemenian, et al.*, Central District of California, Case No. CV 06-1213 ODW).
- Testified on the status of insurance brokers as independent contractors v. employees in a nationwide class action over the classification and benefits of thousands of workers (*David A. Morlan, et al. v. Universal Guaranty Life Insurance Company, et al.*, Case No. 992-274-PER).
- Served as an expert for the defendants in a case involving the status of physicians who sued a medical group based on asserted employment rights (*Ziba Chavoshi, M.D. and Michele Vargas, D.O. v. Michael S. Agron, M.D., Inc., et al.*, Los Angeles County Superior Court, Consolidated Case No. BC333843).
- Served as an expert witness for the plaintiffs, a group of limousine drivers seeking reclassification as employees, suing the operator of a nationwide limousine company (*Brown et al. v. Carey Limousine of S.F., Inc., Carey International, Inc.*, San Francisco County Superior Court Case No. CGC 04 437287).
- Served as an expert concerning independent contractor vs. employee distinctions in litigation against the Los Angeles Times newspaper (*Robert and Elizabeth Rodgers v. Los Angeles Times Communications and Benjamin Ruiz*, No. 04CC09546, Superior Court Orange County).
- Served as an expert for plaintiffs regarding worker classification in the distribution of regulated drugs (*Alfredo Alvarez and Anthony Mariscal v. Fox Transport Inc., We-R-Drayage, McKesson Corp., et al.*, No. BC284345, Los Angeles County Superior Court).
- Rendered expert testimony on the classification of statutory employees in a large class action against multiple employer defendants (*Smith v. Torchmark*, 95-3304-CV- S-4).