


ARE YOU PROPERLY CLASSIFYING YOUR STAFF?

Combatting myths, learning basic rules, and a Ted Lasso game to test our new-found knowledge.

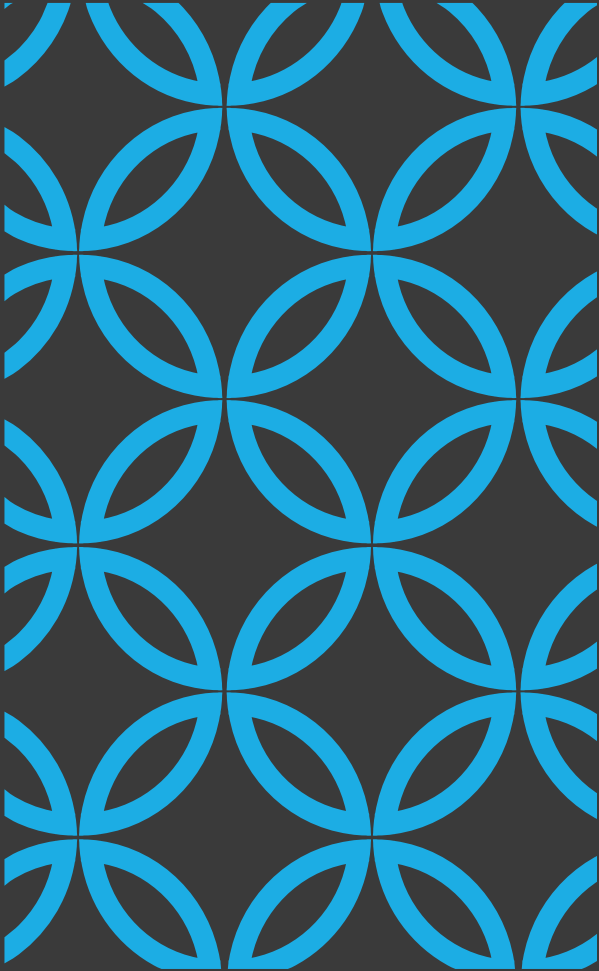


HOW DO WE
KNOW IF AN
INDIVIDUAL IS
AN EMPLOYEE OR
INDEPENDENT
CONTRACTOR?

SPOILER ALERT



It's very
complicated
and different
applicable
tests might
render
different
decisions.



The US Supreme Court has determined that there is

NO SINGLE RULE OR TEST

For example:

IRS could classify a worker as an IC and the DOL could classify the same worker as an Employee

EVEN MORE COMPLEXITY:

Also, just because an individual performing services in Wisconsin meets the IC criteria, doesn't mean that they will still be considered an IC if they are a remote worker in another state....

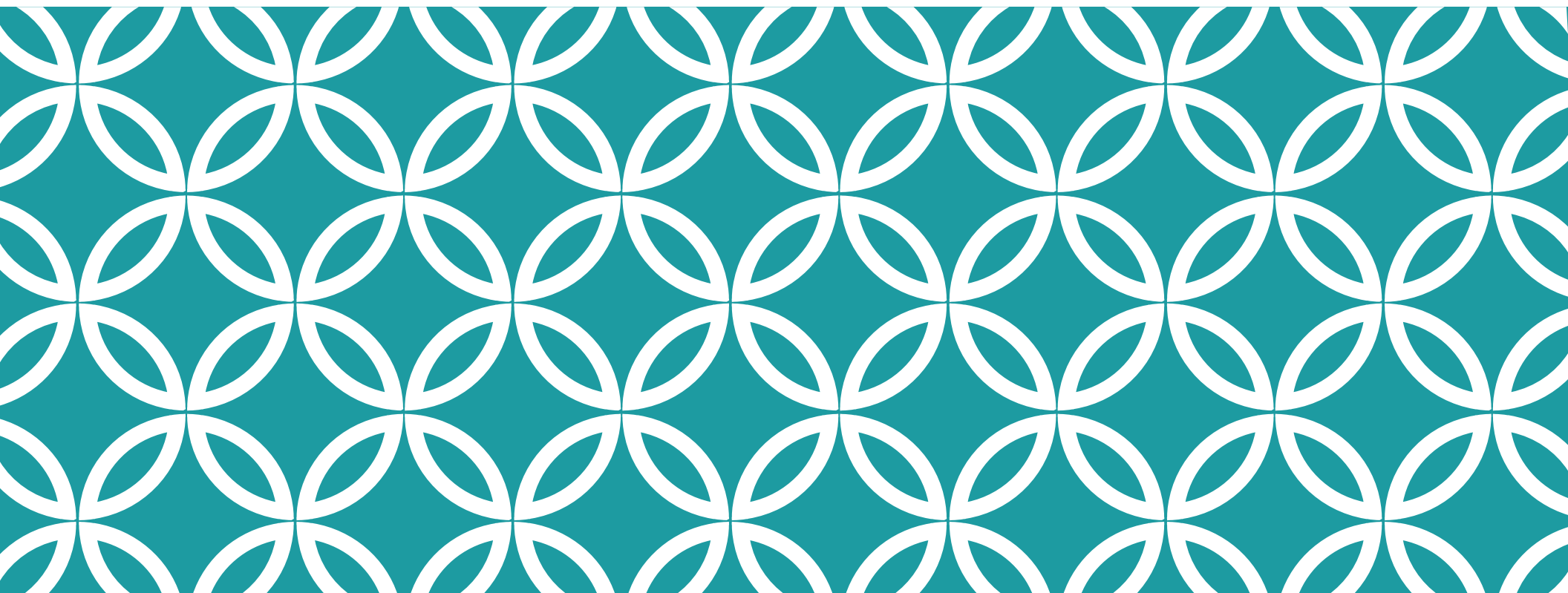
or out of the country.





WHY ARE WE EVEN HERE?
(NEVER FEAR)

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GENERAL CLASSIFICATION* CRITERIA

*Foundational information, that ,
in practice, should be followed
with closer examination of actual
governing tests.

CONTROL & RELATIONSHIP OF PARTIES

ALL TESTS weigh the

Behavioral and Financial Control & Relationship of the Parties

That includes DOL and 33 states using a version of the ABC test,
IRS, DC and 17 states using a version of the Common Law test

&

the four distinct tests Wisconsin agencies use

BALANCING TEST

Tests weigh these factors together.

Most tests look at the **strength** of each factor and the **cumulative outcome** of all factors considered **collectively**.



BEHAVIORAL CONTROL

Employee

- ORG sets schedules, dress code
- ORG determines how work is performed
- ORG trains the Employee
- ORG pays Employee to redo unsatisfactory work
- ORG supervises and provides review/evaluation

Independent Contractor

- Worker chooses work hours
- Worker determines how to perform work
- Worker secures necessary training, skills to perform work
- Worker must redo unsatisfactory work without additional compensation
- Worker has opportunity for profit or loss

FINANCIAL CONTROL

Employee

ORG determines pay rate & frequency

ORG pays for expenses related to services

ORG provides equipment for employee to use to perform services

ORG is responsible for benefits & liability related to services

ORG invests in facilities and equipment

Independent Contractor

Worker determines pay rate & frequency

Worker pays for expenses related to services

Worker provides equipment for performing services

Worker is responsible for benefits & liability related to services

Worker invests in facilities and equipment

RELATIONSHIP OF THE PARTIES

Employee

Services rendered are integral to the ORG's operations

Worker is paid hourly or salaried

Work is regular and/or continuous

Worker is economically dependent on the ORG

Independent Contractor

Services rendered are not integral to the ORG's operations

Worker is paid per project or measured points of satisfied deliverables

Work is per project, contract renewed as needed

Worker is not economically dependent on ORG

Worker holds self out as available to other ORGs as engaging in own independent trade

TIPS



Don't:

- Hire individual as an employee and IC in the same calendar year (W2 & 1099)
- Be pressured into an IC contract if the situation is employment

Do:

- Conduct regular audits of Independent Contractors
- Consult with a professional if it's not clear someone is an IC
- Create clear written agreements with IC that establish relationship guidelines

WHY CARE?

Steep Financial Penalties from various Federal and State Government Agencies or worse

IRS Penalties, for example include:

If Unintentional:

- \$50 for each unfiled Form W-2 ([tax code Section 6721](#)).
- 1.5% of the wages for the failure to withhold income taxes, plus 40% of the employee's share of FICA taxes (Social Security and Medicare), 100% of the employer's share of FICA taxes with interest accrued daily from the date they should have been deposited ([Section 6672](#)).
- 0.5% of the unpaid tax liability for each month up to 25% of the total tax liability ([Section 6651](#)).

If Intentional or Fraudulent:

If fraud or intentional misconduct is suspected, employers could face criminal penalties of up to \$10,000 per misclassified worker and one year in prison ([Section 7202](#)). Also, the person responsible for withholding could be held personally liable for any uncollected tax ([Section 6672](#)).

Federal Government:

- [IRS: Worker Classification 101](#)
- [IRS Voluntary Classification Settlement Program](#)
- [Department of Labor -- Classification](#)
- [Department of Labor – Myths](#)

Wisconsin: Department of Workforce Development

- [Links to Classification Tests](#)
- [Misclassification Information](#)



RESOURCES FOR WORKER CLASSIFICATION



OPTIONS FOR ADMINISTERING EMPLOYEES

When you're too small to administer with in-house staff:

- Partner with a PEO
- Partner with an Employer of Record (larger, friendly nonprofit or Fiscal Sponsor)
- Outsource to a TPA
- Subscribe to online service provider

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