

How to Manage Independent Contractors

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The current court battle between Federal Express and some of its independent contractors could have enormous consequences for California companies.

A California state court has already found for FedEx's independent-contractor drivers, whom the court said had been functioning as employees rather than contractors and therefore deserved all the rights and benefits of regular employees. (The case is now in appeals.) That these particular contractors happen to be drivers is irrelevant — every midsize to large company in California uses independent contractors — sometimes thousands of them — in positions from drivers to chief executive officers.

Contractors should have a profit-or-loss risk, just like any other business. They should have other clients besides you. They should be able to delegate work to their own sub-contractors. They should have their own equipment, and they should have their own place of business. If your contractors don't meet these criteria, you could end up in a lot of trouble.

What can your company do to stay out of court?

- Make sure you have contracts that properly position both parties and clearly spell out expectations.
- Monitor invoices to ensure they match the scope of the work done.
- Familiarize yourself with the Employer's Supplemental Tax Guide (IRS publication 15-A) and Tax Topic 762, which outlines the Internal Revenue Services' three categories of evidence: behavioral control, financial control and type of relationship. Although control factors can be interpreted differently by various enforcement agencies, this information will at least familiarize you with some of the differences between a contractor and an employee.
- Do not accept invoices based on time. Independent contractors should have fixed fee for projects.

These are very complex issues. If you don't handle them correctly, they could put your company in a great deal of jeopardy. If you don't have the financial or human resources — or the expertise — to effectively protect yourself, you might want to consider working with a company that can do it for you.

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