

## ALERT!

### Independent Contractor under Siege!

Over the last 6 months, I've reported that the State and Federal government are "cracking" down on Independent Contractors.

- The State and Federal government are out of money.
- IRS is "randomly" auditing 6,000 employers to determine if their workers are properly classified.
- The first 2,000 audits began approximately six (6) weeks, ago.
- There has been numerous legislation introduced, which would eliminate the Safe Harbor Provision Act, and:
- The Arkansas Supreme Court justified a landmark ruling that superseded the Federal guidelines for the 20 point control test of independent contractors.

I continually stated that:

- Regardless of what type of contract you have with an Independent Contractor:
- You must to continue to distance yourself from this potential exposure:
- I have provided various sources, and recommendations, on how to distance the exposure, and:
- I stated that you should start reviewing your contracts, immediately, before it is too late.

Well, it has happened, again!

According to the NJ Motor Trucks Association, the NJ Courts found owner/ops to be employees for Worker's Compensation purposes, under case#39-2-7290 Chavarria vs. Case Trucking, Inc., App.Div (per Curiam) (8PP.)

Case Trucking Co. appealed a lower Court ruling, on whether an injury of a Petitioner, during the scope of this employment was a responsibility of Case Trucking Co.

- The independent contractor was an owner and driver of his own tractor and trailer.
- He entered into written lease agreement with Case, whereby he agreed to utilize his tractor and trailer to perform hauling services, exclusively for Case Trucking Co.
- The owner/op further agreed to maintain, register, and insure the tractor/trailer at his expense.
- The owner/op was performing maintenance on his tractor, at his residence, when he injured his right eye, causing him to lose sight in that eye.
- The Appellate panel concluded, as a matter of law that the injury occurred during the scope of the independent contractor's employment with Case Trucking Co., and they consequently reversed the contrary ruling of the compensation judge.

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in this issue

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Ahern & Associates, Ltd.

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**Not too long ago, IRS stated, that they believed that they would be able to convert, 50% of independent contractors to employees.**

- You can have the tightest written legal agreement, in place, and;
- You still need to distance yourself from this exposure;

**To complicate matters, there is now proposed legislation, sponsored by Senator John Kerry and Jim McDermott, that would give the IRS more power to go after employers. That's what I said---more power!**

- **Additionally, it will increase fines ten-fold, meaning some fines would end up being \$1MM.**

**Many politicians, either ignore, or refuse the fact that independent contractors are part of the solution as they are able to speed up economic recovery and allow businesses of all sizes to survive in today's economic climate.** However, the government's view point is:

- We need revenue;
- We've done such a wonderful job of creating more debt, the public is going to pay for it!

**What is beginning to happen, is many small business, are becoming hesitant to hire independent contractors for fear of "steep" fines and confusing clarification issues.** Those of you that are utilizing independent contractors, **you must react now, before it is too late.** There are ways to further distance yourself from this problem.

**First, Arkansas, then New Jersey.** What State or States are next?

QUOTE OF THE WEEK: **"Ignorance is not bliss! Challenges need resolutions"** (Andy Ahern)