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Tom Breedlove • Dec. 03, 2015



Determining worker classification (employee vs. independent contractor) is one of the most misunderstood topics in the household employment industry. Rarely a week goes by without us getting a call from a family who's dealing with an expensive mistake caused by a misunderstanding about worker classification. It's usually a variation of one of the misconceptions below:

Misconception #1. Worker classification is a matter of choice. “I’d like to give my

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her what to do, so I don’t control her work.

Many commercial employers struggle with the concept of worker classification, so it’s not surprising that busy families (who don’t do this for a living) might need help in this area. Part of the confusion certainly rests with the IRS test of control, which most lay people would probably argue is ambiguous to the point that reasonable people could easily reach different conclusions.

To provide clarity, the Department of Labor recently weighed in on this topic and provided some additional guidance – new factors to help employers distinguish between an employee and an independent contractor. If it wasn’t already obvious that the IRS and DOL would like to drastically reduce the number of independent contractors in order to create a level playing field for employers, the new guidance should make it abundantly clear.

The new DOL guidance focused on six new factors, but two of them really stood out for domestic workers – economic dependence and permanence.

- **Permanence** refers to the structure of the job. A household employee takes a job with the understanding that they’ll work for the family for the foreseeable future. The job goes on into perpetuity – until an unknown time in the future when she either quits on her own or the family decides to discontinue the relationship. An independent contractor, on the other hand, generally has a pre-defined task that lasts for a finite period of time.
- **Economic dependence** is exactly what it sounds like. A worker is considered an employee if a significant portion of their income comes from a single source because they are then economically dependent on that source for their financial well-being. This holds true for most nannies, senior caregivers, personal assistants, and other household employees because they rarely have time to work for more than a few families. An independent contractor has a diversified client

base – if one client falls through, they are not materially affected because they can,

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It's important for your families to understand the new stricter guidelines for worker classification – and to realize that misclassification is considered tax evasion and carries significant penalties and problems.

In addition to being illegal for the family, independent contractor classification is also more expensive for the employee (since she has to pay twice as much in Social Security & Medicare taxes) and denies her crucial benefits like unemployment insurance.

As we get closer to peak tax season, remember that families may have misconceptions about worker classification – and, if left to their own devices, they may make an expensive mistake in this area. We strongly advise all families to address worker classification and all the other payroll, tax and labor law issues that may come into play *at the time of hire*. Waiting until “tax time” usually results in numerous payroll, tax and labor law mistakes that add considerable expense. The old saying “an ounce of prevention is worth a pound of cure” definitely applies here.

Tom Breedlove is Director of Care.com HomePay, Powered by Breedlove. The company is 100% focused on household employment and has invested in tools and resources to help household employers make sure they are compliant.

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