

Dear HR Knowledge: What if an employee “wants” to be an independent contractor but I know they should be an employee?

When an employee expresses an interest in becoming an independent contractor, this can often seem like a great move. For the individual, there is more flexibility, the ability to establish one's own work/life balance, and the potential to earn more money as the employer saves money on taxes and benefits. For the employer, there is the cost savings of not paying payroll taxes or providing benefits, and no employee-related liabilities. It may seem like a win/win for both sides.

Keeping in mind that there are additional state regulations, depending on the state you and your employee are located in; when determining whether an individual should be classified as an independent contractor as opposed to an employee, there are three "factors" we generally review: behavioral control, financial control, and relationship control:

1. Behavioral control: Who has control over how, when, and where the work is done?
2. Financial control: Who has control over the tools and supplies and financial aspects of the work?
3. Relationship control: Are employee benefits offered; is a written contract outlining services provided?

Based on the facts of the relationship, not employee desire. As an employer, you have the option of providing a flexible work schedule, flex time, job sharing etc., which may achieve the employee's goal of having flexibility without putting your organization at risk for costly misclassification penalties.

If an employee has asked this question, take the time to understand the "question behind the question." Is the employee seeking a better work/life balance, do they want to work for you while pursuing another job opportunity, or do they want more control of their life? Engage in this kind of

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discussion with your employee and you might end up not only retaining a valuable worker, but also achieving a better, stronger relationship and avoiding costly employment misclassification mistakes.

The People Simplifying HR

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