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**DISCLAIMER: THE FOLLOWING INFORMATION IS PROVIDED AS GENERAL, NON-SPECIFIC INFORMATION. IT SHOULD NOT BE RELIED UPON AS SPECIFIC ADVICE. PLEASE CONTACT AN ATTORNEY IN YOUR RELEVANT JURISDICTION FOR LEGAL ADVICE.**

***What are the benefits of Using an Independent Contractor?*** Many companies, as they choose to expand, weigh the pros and cons of adding employees to the company's payroll. Sometimes, in an effort to save money a company will hire an independent contractor (IC) to save on expenses. In addition, to avoiding salary, the hiring company avoids the following: federal withholding tax, social security and medicare tax, federal unemployment tax, the applicable state taxes, which includes unemployment, workers' compensation insurance, employment benefits, which includes mandatory healthcare for employees working over 20 hours in the State of Hawaii, and finally, the provision of workspace and equipment that may be necessary for the job. That can be a hefty bill for a small or medium-sized business. In addition, an IC may be well suited for a single task or specific short-time goal and there is no need for on-going cost associated with an employee. *\*For ICs a 1099-MISC is filed with the IRS.*

***What are the benefits of Utilizing an Employee?*** Before you decide to convert all your employees to ICs consider there are reasons why many companies continue to use employees rather than ICs. First, while training is another costly facet of employees, the training means you can supervise and direct the way the job is done. This is NOT the case with an IC, as they can do the work in any fashion they choose. Consider also the IC's ability to work for a competitor, as well as good employees show up for work day after day, whereas an IC is under no such loyalty or obligation to devote their time solely to your business. Finally, the biggest reason is the potential government oversight of the misclassification of an "employee" as an IC. *\*For an employee a W-2 is filed with the IRS.*

***What is the Problem with Misclassification? Should I be Concerned?*** Yes. The IRS, US Department of Labor, the Hawaii State Departments of Taxation and Labor all care about what you call your workers; an employer of an employee owes a lot of different taxes and misclassification means none of those taxes are properly being paid. In many cases, where a hiring company misclassified workers the company was forced to pay penalties, back taxes, plus the potential of the IC bringing litigation due to owed benefits, as if they would have been an employee. In the 90s, the *Microsoft* case had the software company pay \$97 million to workers after an IRS audit on its improper classifications.

***What is the Difference Between an Employee and Independent Contractor?*** While each government agency uses a different test to conduct its investigation of misclassifying workers, the biggest factor tends to be CONTROL; the more you exert control over the worker, the more likely that worker is an employee and the less so, likely a contractor. Consider the categorical ways you could control a worker, whether it be financial, behavioral, or the relationship itself. **Consider using a written contract, whether it is for an employee or contractor, to specify the relationship and make sure it applies to your new worker properly.**