MANAGING COMPLIANCE ISSUES FOR CONTINGENT WORKERS AND TELELCOMMUTERS

Presented by:

Patrick J. McHale, Esq.
Kainen, Escalera & McHale, P.C.
21 Oak Street, Suite 601
Hartford, CT  06106
Telephone: (860) 493-0870
Facsimile: (860) 493-0871
Email: pmchale@kemlaw.com
www.kemlaw.com

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I. MANAGING A CONTINGENT WORKFORCE

A. Contingent Workers Are A Growing Trend

1. Continuing advancements in the area of information technology, combined with a chronic labor shortage and an increasing desire on the part of many workers to spend more time at home, will require successful companies to rethink their traditional approaches to human resources and staffing models.

2. To achieve efficiencies and gain flexibility, more employers will engage contractors, consultants and temporary workers as an alternative to adding regular, full-time employees.

3. Among the advantages to employers are:

   (a) increased flexibility in staffing and more control of the size of the workforce, to respond to fluctuating supply-and-demand in fast-paced, internet-driven global economy;

   (b) reduction of risk caused by impact of litigation when disciplining/terminating regular employees; and

   (c) reduced costs in hiring, training, payroll administration, unemployment contributions, social security and Medicare taxes, workers’ compensation premiums, employee benefits, and wage increases and incentives.

4. Among the advantages to employers are:

   (a) higher pay for executive, professional and other high-tech skilled workers;

   (b) more flexible hours;

   (c) training in a new industry or field.

B. Variety of Types of Contingent Workers

1. *Traditional Temporary Help*: Workers hired by a temporary help firm assigned to work at client offices, generally to supplement the client’s workforce due to short-term absences, seasonal work fluctuations and special projects.
2. **Independent Contractors/Consultants**: Workers whose services are engaged by contract to perform specialized tasks, often requiring a high level of skill, discretion and independent judgment. Work is not “directed or controlled” by the service recipient.

3. **Leased Workers**: Often, workers initially hired by a client-company, who are then hired by a leasing company and subsequently leased back to the client company by written contract. Generally, leasing company administers payroll, provides employee benefits, maintains personnel records, and performs other functions ordinarily done by a human resources department.

4. **Outsourcing/Managed Service**: Outside firm with particular expertise is hired to supply personnel and to assume complete responsibility for specific operations. Traditionally limited to non-core functions such as data processing, security, food service, maintenance and landscaping.

C. Key Issues in Managing Contingent Workforce

1. Classification as employee or contingent worker. See Section I(D), below.

2. Entitlement to benefits and other legal protections. See Section I(E), below.

3. Protection of intellectual property rights and confidentiality of trade secrets. See Section I(F), below.

4. Practical suggestions for preserving contingent worker status. See Section I(G), below.

D. Classification as Employee or Contingent Worker

1. Proper classification of individuals as employee or contingent worker helps employers avoid liability and penalties under various employment-related statutes, including state and federal wage and hours laws, state unemployment and workers’ compensation acts, state and federal tax laws, the Employment Retirement Income Security Act (“ERISA”), state and federal anti-discrimination laws, the Occupational Safety and Health Act (“OSHA”), immigration laws, and state and federal family and medical leave acts. See Section I(E), below.

2. Proper classification is often complicated because there is no single test for determining whether a worker is or is not an employee.
3. Two most common tests for determining employee vs. contingent worker status are the "right to control" test, which focuses on the extent of control an employer can exercise over the worker, and the "economic reality" test, which focuses on the extent the individual depends on the employer's business for his/her livelihood. Some courts' employ hybrid test; Internal Revenue Service employs expansive 20 factor "right to control" test.

4. Generally speaking, worker is classified as an employee under "right to control" test when the employer can tell him/her what to do and how, when and where to do it.

5. "Right to control" test (generally utilized in benefits and discrimination cases) is based on factors including:

(a) the extent of control exercised by the employer over the details of the work;

(b) whether the worker is engaged in a distinct business or occupation;

(c) the kind of occupation and whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;

(d) the skill required in the particular occupation;

(e) whether the employer or the worker supplies the instrumentalities, tools and workplace;

(f) the length of time for which the person is employed;

(g) the method of payment, whether by time worked or by the job;

(h) whether or not the work is part of the regular business of the employer;

(i) whether or not the parties believe they are creating an employer-employee relationship; and

(j) whether or not the worker does business with others.
6. “Economic reality” test (generally utilized in wage and hour cases) is based on six factors, each of which is examined and analyzed in relation to one another, and no single factor is determinative:

(a) the extent to which the work performed is an integral part of the service recipient’s business;

(b) the extent of the worker’s investment in his own vs. the service recipient’s business;

(c) the opportunity for profit and loss available to the worker;

(d) the degree of control that the service recipient exercises or retains over the worker;

(e) the permanency of the working relationship; and

(f) the level of special skills needed to perform the job.

7. IRS employs 20 factor “right to control” test for tax and withholding purposes, which includes following factors:

(a) Instructions: Control is indicated when employer has right to direct when, where and how work is performed;

(b) Training: Control is indicated when worker is required to develop skills as a result of training from employer;

(c) Integration: Control is indicated when services performed are essential element of employer’s operations;

(d) Services Rendered Personally: Control is indicated by inability to delegate;

(e) Hiring, Supervising and Paying Assistants: Control is indicated if worker does not have these responsibilities;

(f) Continuing Relationship: Control is indicated by regular and frequent performance of services;

(g) Set Hours Of Work: Control is indicated if worker cannot set the time when s/he works;

(h) Realization of Profit/Loss: Control is indicated where worker does not realize profit/loss, and is not paid by the job or straight time;
(i) Furnishing of Tools and Materials: Control is indicated when the employer, not the worker, provides the tools and materials;

Other factors include payment of business or traveling expenses, working for more than one firm at a time, right to terminate, skill of worker, characterization by parties, intent, industry custom, benefits, insurance, licenses and taxes.

E. Entitlement to Benefits and Other Legal Protections

1. Generally speaking, employer obligations and worker rights are only triggered under various employment-related statutes when an employer-employee relationship has been established. Contingent workers are not, ordinarily, entitled to benefits and other legal protections.

2. **Employee Benefits:** Typically, businesses provide “employees” with certain health and welfare benefits, such as participation in health insurance or retirement plans. Employee benefit plans are largely governed by ERISA. Under ERISA, contingent workers are not entitled to such benefits. However, recent judicial decisions have extended application of health, pension and stock purchase plan benefits to “freelancers” and “temporary” part-time employees whom companies sought to exclude from the respective plans. See, e.g., Vizcaino v. Microsoft Corp., 120 F.3d 1006 (9th Cir. 1997); Epright v. Environmental Resources Management, Inc., 81 F.3d 335 (3rd Cir. 1996). These decisions were rendered despite the fact that the contingent workers had acknowledged in writing their ineligibility for benefits due to their classification. Thus, by misclassifying workers as contingent, employers face exposure to large class action suits and liability for retroactive benefits. **Lesson:** Regardless of how an employer and a worker construe their original hiring agreement, the worker’s actual working arrangement and the terms of the applicable benefit plans will determine status.

3. **Taxes:** The Internal Revenue Code (“IRC”) obligates employers to pay employment taxes on behalf of and to withhold taxes from (income, social security, Medicare) employees only. No payroll or withholding requirements for workers who are properly designated as contingent. However, by misclassifying workers as contingent, employers can face claims and significant penalties for failure to withhold and pay taxes; employee tax delinquency; failure to deposit taxes; failure to file W-2 and 941 forms; or negligence and fraud. In addition, corporate officers can be held personally liable for withholding tax owed if they are found responsible for the willful
failure to withhold and pay employment taxes.

4. **Wage and Hour Laws**: Both the Fair Labor Standards Act (“FLSA”) and Connecticut’s wage and hour laws set standards for minimum wages and overtime pay for “employees.” These provisions do not cover contingent workers. However, an employer who misclassifies an employee as a contingent worker and does not pay that worker minimum wage or overtime as required may be liable for the amount of those unpaid wages, liquidated damages (double the amount of unpaid wages), and attorneys’ fees and costs. Willful violations of the wage and hour laws also carry criminal penalties.

5. **Connecticut’s Unemployment Compensation Act**: Expressly limits benefits to “employees” and delineates the “ABC” test for determining employment status. Under the “ABC” test, any service rendered by a person to an employer is considered “employment,” unless and until the employer proves that:

   (a) the person has been and will continue to be free from control and direction in connection with the performance of work; and

   (b) the work is performed either outside the usual course of the business or is performed outside of all the places of business; and

   (c) the worker is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

Liability for misclassification includes payment of overdue payroll taxes with interest; an increase in the employer’s “experience” rating; and fines and/or imprisonment for “knowing” violations.

6. **Connecticut’s Workers’ Compensation Act**: Guarantees medical care, protects against income loss and provides survivor benefits only for “employees” who suffer work-related injury, illness or death. If employer misclassifies an employee as an independent contractor, and therefore fails to provide workers’ compensation insurance, the employer can be subject to a civil action brought by the attorney general. Employers can also be subject to fines for each such misclassification. Misclassification can also serve to eliminate the operation of the exclusivity doctrine, allowing the worker to sue for work-related damages in court.
7. **State and Federal Anti-Discrimination Laws:** Proper classification of workers as employees or contingent workers impacts upon threshold coverage issues under anti-discrimination laws (e.g., Title VII only applies to employers with 15 or more employees), and damage cap issues (e.g., Title VII caps compensatory and punitive damage awards based on a sliding scale tied to the number of employees).

Beyond “counting” issues, most state and federal anti-discrimination statutes protect only employees from discrimination. In addition, most anti-discrimination statutes employ a “joint employer” analysis (e.g., who controls the workers’ wages, and terms and conditions of employment, such as hours worked or benefits provided) for determining whether the employer-client and/or the temporary or leasing agency are liable for discrimination against contingent workers:

(a) **Title VII/Age Discrimination in Employment Act:** An employer-client will be held accountable if it unlawfully discriminates against a staffing company’s employees on the basis of race, sex or age. The staffing company may also be liable if it knows about the discriminatory action but does nothing about it.

(b) **Americans with Disabilities Act:** As under Title VII, both staffing firms and employer-clients can be considered co-employers of workers assigned to the client, subject to liability for disability discrimination. The ADA has an express provision making it applicable to “contractual arrangements” to supply staff. With respect to reasonable accommodation issues, it is likely that staffing companies and clients will be obligated to work together to provide accommodation for contingent workers. The extent of any such accommodation will depend, among other things, on the length of assignment and the cost involved.

(c) **Connecticut’s Fair Employment Practices Act:** Connecticut’s anti-discrimination provisions expressly hold “aiders and abettors” liable for discrimination, in addition to the “employer.”
8. **State and Federal Family and Medical Leave Acts:** Regulations under both Acts contemplate that a "joint" employment relationship will exist based on such factors as the nature and degree of control of the workers, the degree of supervision (direct or indirect) of the work, the power to determine pay rates or the methods of payment of the workers, the right to hire, fire or modify the employment conditions of the workers. The regulations emphasize that the “entire relationship is to be viewed in its totality” in determining whether a joint employment relationship exists.

If a “joint” employment relationship is found to exist, both the staffing firm and the client must count the contingent worker in determining threshold coverage under the Acts. If coverage thresholds are met, the staffing firm is then deemed to be the “primary” employer, responsible for giving required notices, providing leave, maintaining health benefits and restoring jobs. Both the staffing firm and the employer-client (as the “secondary employer”) are bound by the anti-discrimination provisions in the statute. The secondary employer may also be liable in the event of default by the primary employer.

9. **Immigration:** The Immigration Reform and Control Act ("IRCA") requires that every individual employed in the United States be authorized to work under the immigration laws. Unless a contingent worker is on its direct payroll (e.g., taxes are withheld, W-2 form supplied, salary and company benefits are provided), an employer-client does not have the obligation to verify the employment status of a contingent worker; that responsibility lies with the staffing firm. However, a client company may nonetheless be held liable for violating the IRCA if it knowingly allows the staffing firm to supply it with a contingent worker who is an unauthorized alien. Moreover, if a worker is misclassified as contingent, and the worker is unauthorized, a client company can incur monetary penalties.

10. **Worksite Safety:** Under OSHA, even when contingent workers are at issue, the party with direct control over the workplace and the actions of the workers involved is normally cited for violations -- usually the employer-client. Staffing firms will normally not be cited for OSHA violations unless necessary to cure the violation or if the company knew or should have known about the violation. The employer-client normally must maintain OSHA records of illnesses and injuries of contingent workers if the contingent workers are subject to the employer-client’s supervision. Employer-clients must also notify temporary employees of hazardous substances in the workplace.
11. **Labor Relations**: The National Labor Relations Board ("NLRB") has determined that where there is a sufficient nexus between the staffing firm’s employees and the employer-client, the staffing firm’s employees may be included in the client’s collective bargaining unit. However, contingent workers cannot be organized into a joint unit with employees of the client company to which they are assigned without the consent of both the staffing firm and the client. Interference with the staffing firm’s employee’s right to participate in union organizational activities or to join the union may constitute an unfair labor practice against both the staffing firm and the employer-client. The employer-client may defend against such an unfair labor practice by showing that it did not have an employment relationship with the worker, such as in a managed care arrangement. A staffing firm may not be held liable for an unfair labor practice committed by the client unless (a) it knew or should have known that the client acted against the worker for unlawful reasons, and (b) it acquiesced in the unlawful action by failing to protest it or to exercise any contractual right it might have to resist it.

F. Protecting Intellectual Property Rights and Confidentiality of Trade Secrets

1. Defining intellectual property rights and ownership of trade secrets is critical at time of hire.

2. Employing contingent workers might cause an employer to lose intellectual property rights that the company would have owned had the worker been an employee. **Example**: Classifying a worker as an independent contractor might cause an employer to lose copyright ownership of ideas and designs developed by the worker, since the Copyright Act of 1976 defines a “work made for hire” as one “prepared by an employee within the scope of his or her employment.”

3. Allowing a non-employee (e.g., a contingent worker) access to information that could otherwise be classified as trade secrets could eliminate that designation.

4. To better ensure confidentiality of trade secrets and to clarify ownership of intellectual property developed by a worker, employers should consider having all workers (contingent and regular) sign an agreement at the time of hire recognizing that the employer owns all intellectual property, and that the confidentiality of all trade secrets will be maintained.
G. Practical Suggestions for Preserving Contingent Worker Status

1. **Get it in writing:** Notwithstanding the Microsoft case, continue to obtain and ensure compliance with written agreements regarding contingent workers.

   Any agreement with a staffing firm should specify the nature of the contingent relationship; require the staffing firm to maintain workers' compensation benefits for workers; require the staffing firm to comply with all laws, including wage and hour, tax, discrimination and benefit laws; and require the staffing firm to have an indemnification clause that holds the client company harmless and pays for the defense of any employment related claim.

   Any agreement with a contractor should state a specific scope of work for a specific duration; require the contractor to supply his or her own workers' compensation insurance and/or general liability insurance; require the contractor to work off company premises and/or to supply his or her own equipment and tools; require payment to be rendered upon completion of a certain task or job; require the contractor to comply with all laws, including wage and hour, tax, discrimination and benefit laws; and require the contractor to have an indemnification clause that holds the company harmless and pays for the defense of any employment related claim.

2. **Use of Proper Terminology:** Refer to contingent workers as workers, not employees. Avoid using the term “temp-to-perm” or other such references to converting to regular employee status.

3. **Watch Out When Managing and Disciplining:** Remember that client company managers who manage areas where contingent workers are assigned are not the managers of the contingent workers. The “manager” of the contingent worker is an employee of the staffing firm. Refer questions about pay, benefits, overall work performance, etc., to the staffing firm. Furthermore, any concerns about a contingent worker’s performance or conduct should be directed to the staffing firm that employs the worker. The client company should not discharge contingent workers. However, the client company should have a legitimate business reason for ending the worker’s assignment, which should be communicated to the staffing firm.
4. **Don’t Treat Contingent Workers Like Regular Employees:**
   - Do not have a contingent worker complete an employee application.
   - Do not pay business expenses. Businesses pay their own expenses, and expenses should be built into the contract for the cost of the entire job.
   - Do not provide continuing education training (but acceptable to provide training specific to job or company procedures).
   - Do not have contractors perform similar work of employees or perform routine work. Contractor work should not be close to core business operations and therefore considered employee-type work.
   - Do not allow contingent workers to enroll in any company-sponsored benefit plans; do not pay them for any company holiday.
   - Do not issue company business cards, employee ID badges, e-mail addresses or facility keys.
   - Do not require the contractor to work “full time” or have set hours. Contractors should control when and how they work.
   - Do not conduct performance evaluations similar to employee evaluations. Companies should require deadlines and results and can require contingent workers to follow job and company rules.

II. **MANAGING A TELECOMMUTING WORKFORCE**

A. Telecommuting is a Growing Trend

   1. Broad definition of telecommuting -- any arrangement whereby employees work at a location other than the main office of their employer.

   2. Telecommuting typically involves employees working from their home with the aid of technological linkage (i.e., computers, fax machines, portable electronic devices).

   3. Telecommuting challenges the traditional notions of how work is structured, as the employee’s work may no longer be performed at the employer’s workplace.

   4. Employers interested in developing telecommuting programs should carefully review potential legal risks and take reasonable steps to reduce liability.
B. Wage and Hour Compliance

1. Non-exempt employees must be paid for all hours worked, regardless of where the work is performed.

2. Employers must pay overtime to non-exempt employees who work more than 40 hours a week.

3. If an employer allows telecommuting, the employer bears the burden of monitoring the employee’s hours and taking steps to restrict hours subject to business necessity.

4. Accurate recording of hours worked is vital to an employer’s ability to defend against claims for unpaid wages.

5. Employers should establish (and aggressively enforce) a policy requiring authorization of overtime for non-exempt employees.

6. Exempt employees should be monitored on the basis of productivity, not hours worked, so as not to compromise their exempt status.

C. Workers’ Compensation

1. Work-at-home arrangements create unique problems in determining whether an injury is work-related.

2. In order to be compensable, an injury must:
   a. Arise out of the employment;
   b. Occur in the course of employment. Specifically, the injury must take place:
      (i) within the period of employment;
      (ii) at a place where the employee may reasonably be; and
      (iii) while the employee is reasonably fulfilling the duties of the employment or doing something incidental to it.

3. The key question is did the injury "arise out of and in the course of" the employment. See Tovish v. Gerber Elec., 229 Conn. 587 (1994). In Tovish, the Connecticut Supreme Court declined to review an Appeals Court case that awarded workers' compensation
benefits to a salesman who suffered a fatal heart attack shoveling snow before leaving his home office to visit a customer. The court concluded it was not yet possible to draw a "bright line" distinction between activities performed in the course of employment and those merely preparatory to a course of employment where the employee was based at an in-home office.

4. Telecommuting may result in increased opportunity for employee fraud since there are usually no unbiased witnesses to injuries at home.

D. Americans with Disabilities Act

1. The ADA offers special protection to a qualified individual with a disability.

2. Employers must make a determination as to whether an employee can perform the essential functions of a job with/without reasonable accommodation.

3. Depending upon the circumstances, the ADA may require an employer to provide telecommuting as an accommodation for a disabled worker.

4. Case law is in somewhat of a state of flux on this issue. In Van Zande v. Wisconsin Dept' of Admin., 44 F.3d 538 (7th Cir. 1995), the United States Court of Appeals for the Seventh Circuit held that an employer is not generally required to accommodate a disability by allowing the disabled worker to work at home. However, in Anzalone v. Allstate, 1995 WL 35613 (E.D. La.), aff'd without op., 74 F.3d 1236 (5th Cir. 1995), the United States Court of Appeals for the Fifth Circuit found that the determination should be made on a "case by case basis."

5. Case law in Connecticut: In Misek-Falskoff v. IBM, aff'd without op., 60 F.3d 811 (2d. Cir.), cert. denied, 116 S. Ct. 522 (1995), the United States Court of Appeals for the Second Circuit held that, where collaboration with other employees, meetings, and training were essential parts of an employee's job, the employer could reject telecommuting as an accommodation.

6. Does absence from the employer's workplace result in an undue hardship if telecommuting is a possible accommodation? (An "undue hardship" defense is much more difficult to assert if telecommuting program is already in place for other similarly-situated employees).
E. Workplace Privacy

1. Employer's right to inspect workplace to oversee safe and appropriate work surroundings may conflict with the employee's interest in privacy.

2. Additional problems can arise when it is necessary for the employer to retrieve equipment provided by the employer to the employee for use at home.

F. Confidentiality of Employer Information

1. Depending upon the nature of the business, employers may need to be concerned about their ability to protect trade secrets and other confidential information when such material is being transmitted over the Internet or unsecure phone lines.

2. Establish policy to make clear who is permitted to have access to employer's information (computer, disks, etc.) at the home office.

3. Develop policy to protect confidential information before instituting telecommuting, through the use of passwords, confidentiality agreement, locked computer system, etc.

4. Consider data encryption before transfer in order to protect trade secrets and other confidential information from being intercepted in transmission.

5. Although this is not strictly an employment law issue, it is an example of the sort of considerations frequently overlooked when an employer decides to allow employees to telecommute.

G. OSHA Concerns

1. OSHA and related state statutes require that an employer provide a workplace free from hazards that are likely to cause severe harm or injury. (Purpose of the Act is "to assure as far as possible every working man and woman in the nation safe and healthful working conditions.")

2. Because OSHA will not define "workplace" in a way that would defeat its purpose, telecommuters who work in places other than the employer's premises are not outside the purview of the Act, and employers are not off the hook for compliance, at least for the part
of the home in which the employee actually performs his or her work.

3. To minimize OSHA claims, an employer should prescribe standards and require the employee to set up his or her home office in a safe, hazard-free manner. The employer should properly maintain any equipment provided to the employee and promptly address any complaints of unsafe or unhealthy conditions. Any agreement with the telecommuting employee should stipulate as to periodic inspections by the employer.

H. Independent Contractor or Employees: simply allowing an employee to work at home does not make him/her an independent contractor.

I. Contamination of Computer System: be aware that when an employee works at home, there is an increased risk that viruses could be spread from the home system to the company system.

J. Selecting Employees for Telecommuting Assignments

1. Employers need to develop appropriate criteria for selecting eligible employees.

2. Criteria should be business-based and non-discriminatory (avoid gender-based decisions).

3. Apply criteria uniformly to all employees.

4. Job functions must be such that they can be accomplished without in-person interaction with others in the workplace.

5. Employees suited for telecommuting are those motivated to work alone and still get the job done.

K. Managing Performance

1. Overcome management fear that "absent" employees are less productive.

2. Shift focus from managing activity to managing results.

3. Develop objective performance standards to reduce the risk of liability for discrimination.

4. Monitor employee performance to avoid claims of negligent supervision.
L. Other Practical Issues

1. Regulations pertaining to business use of home
   a. Local zoning may regulate business use of home.
   b. Special municipal licenses/permit requirements may be required.
   c. Consider the impact of rules that apply to the homeowner on the employer, e.g., lease restrictions, condominium rules, and the cost of employer review of such potential problem areas.

2. Insurance Coverage Issues
   a. Coverage for injuries to business visitors to employee’s home office.
   b. Coverage for damage to employer's equipment because of fire, flood etc. at employee’s home.

3. Collective Bargaining Requirements

M. Suggestions for Establishing a Telecommuting Relationship

1. Develop a set of telecommuting policies and an agreement with the employee/collective bargaining agent, so that the parties clearly understand the arrangement.

2. Select the right employee.
   a. To avoid creating problem employees, look for employees who meet deadlines effectively, can work with minimal supervision, who enjoy solving problems independently, and who are at least moderately social (to avoid problems associated with isolation).
   b. Require a minimum amount of time with the employer and some tenure in a certain position before allowing employee to telecommute.
3. Develop and Implement Appropriate Telecommuting Agreement

a. Avoid promises:
   i. That telecommuting will be a permanent situation;
   ii. That employee will have job as long as telecommuting is possible;
   iii. That restrict the right to terminate the relationship if business necessity requires.

b. Recommended Issues for Review and Possible Inclusion in Policy/Agreement.
   i. Time Records
      • promise on part of employee to record time and regularly submit to employer;
      • specify non-exempt employee’s work hours;
      • requirement of advance approval of overtime;
      • procedure requiring check in/check out with supervisor at beginning and end of day; and
      • notification when employee leaves "office."
   ii. Access by Employer to Home Workplace for Safety Inspection. Be sure that the agreement covers the following areas:
      • how inspection will take place;
      • what time of day and how frequently; and
      • who will conduct the inspection.
   iii. Confidentiality of Computer Data and Other Company Records
   iv. Restrictions on Personal Use of Company Equipment
      • some restrictions necessary to protect against virus infection of employer computer system, etc.;
• provide for the return of employer’s property upon termination; and

• specify who owns each piece of equipment entrusted to employee.

v. Adapt workplace Workers' Compensation policies and procedures, including making record and report to employer of injury within certain number of hours; allowing for inspection of premises; and participating in an investigation so that employer can reduce fraudulent reports and prevent future injuries.

4. Training
   a. Offer basic instruction on such topics as how to set up an office at home and (for supervisors) how to manage people from a distance.

   b. Additional subjects can include use of equipment, ergonomics and safety issues, how to structure work efficiently, and effective communication strategies between the off-site employee and his/her manager.

III. RECENT CONNECTICUT SUPREME COURT RULINGS ON INDEPENDENT CONTRACTORS

A. Southwest Appraisal Group v. Administrator, Unemployment Compensation (Connecticut Supreme Court, March, 2017)

   1. Rules an individual who works only with one company can be an independent contractor.

   2. Focused on whether the work was “customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed”.

   3. Said must look at the “totality of the circumstances” including:

      (a) the existence of state licensure or specialized skills;

      (b) whether the putative employee holds himself or herself out as an independent business through the existence of business cards, printed invoices or advertising;
(c) the existence of a place of business separate from that of
the putative employer;

(d) the putative employee’s capital investment in the
independent business, such as vehicles and equipment;

(e) whether the putative employee manages risk by handling his
or her own liability insurance;

(f) whether services are performed under the individual’s own
name as opposed to the putative employer;

(g) whether the putative employee employs or subcontracts
others;

(h) whether the putative employee has a saleable business or
going concern with the existence of an established clientele;

(i) whether the individual performs services for more than one
entity;

(j) and whether the performance of services affects the goodwill
of the putative employee rather than the employer.

B. Standard Oil v. Administrator, Unemployment Compensation
(Connecticut Supreme Court, March, 2014)

1. Reversed unemployment decision that workers were employees
and not independent contractors.

2. On part A of ABC test, found that the workers owned their own
tools and vehicles, were independently licensed and certified and
unsupervised at their worksites by representatives of Standard Oil.
Further, installers/technicians were free to accept or reject any
assignment offered to them without adverse consequences.

3. On part B of ABC test, found that “place of business” should not be
extended to homes in which installers/technicians worked,
unaccompanied by the hiring entity’s employees and without
supervision.

4. Case is especially helpful for businesses that use independent
contractors to visit and service customer sites.