F&B®

HR CORNER

FEES & BURGESS, P.C.

Volume 6, Issue 12 December 2010

Avoiding Liability for Misclassification of Independent Contractors

Because of increasing vigilance regarding classifications of independent contractors, including proposed budget increases for the Department of Labor to investigate and prosecute misclassifications, companies are well-served to review their own classifications to help avoid what could be significant penalties and workplace disruptions in the near future. Employers often favor classifying workers as independent contractors to avoid various benefits and tax liabilities that arise in employment relationships, including payroll taxes, overtime requirements, workers' compensation liability, and other basic benefits such as inclusion in various health and other insurance plans. However, the classification analysis is not as simple as whether a worker has signed an independent contractor agreement. Employers must look more closely at the actual relationship between the parties and compare the alleged contractor's work to that of other company employees.

There are several laws and regulations that govern classification of workers, depending on the specific context in which the issue arises. (For instance, the Internal Revenue Service has an interest in monitoring employment relationships for the purpose of collecting payroll taxes, and it has published standards for monitoring such relationships. Similarly, other federal laws and regulations have their own standards in line with their specific interests in the relationship.) In general, these standards and tests contain similar factors that emphasize the basic element of control: who determines how the worker performs his job duties, and who determines the day-to-day activities of such worker? In general, independent contractors should maintain their own methodologies and practices by which they complete whatever duties they are assigned, while employees may be more closely directed and monitored on a day-to-day basis. True independent contractors are assigned tasks by a company, who should not monitor the means by which such task is accomplished but should only accept the results of the work. Employees, however, may be guided and instructed and given more detailed and frequent duties to accomplish assigned tasks. Independent contractors should maintain their own supplies, while employees often utilize the supplies of their employer. Furthermore, independent contractors should be performing work that is different than, or in addition to, the work performed by the company's employees. Otherwise, the distinction between the working relationships may lose its significance.

FEES AND BURGESS, P.C., Emphasizes:

General Civil Litigation

Commercial Law & Litigation

Municipal Law & Litigation

Police Civil Liability Defense

Employment Law & Litigation

Construction Litigation

Corporate Law & Government Contracting

Insurance Defense

Railroad Law

Corporate Counsel Services

Avoiding Liability for Misclassification of Independent Contractors

...continued from page 1

In addition to the proposed budget increase for enhanced enforcement by the Department of Labor, other federal laws have been proposed that would directly target misclassified employees and create direct penalties for any such misclassifications. For instance, the proposed Employee Misclassification Prevention Act would create a record-keeping requirement for any workers classified as independent contractors similar to those required for true employees (including records of hours worked and monies paid for such work). In addition, the Act would create enhanced penalties for misclassification including double liquidated damages and a civil penalty of up to $1,100 per misclassified employee. While this law has not yet passed, it indicates the intent of Congress, in addition to the intent of the White House and the Department of Labor, to focus on issues of misclassification, not only as a way to protect workers but to help collect the unpaid taxes and other monies being lost to independent contractor relationships.

FEES & BURGESS, P.C. - Calendar of Events

FEES & BURGESS, P.C., is proud to present and participate in the presentation of the following upcoming seminars/webinars :

January 19, 2011; 11:30 a.m. – 1:00 p.m. (CST), Holiday Inn, Research Park
Use of the New INCOTERMS ® 2010 in Domestic and International Transactions
This meeting hosted by Jeff Roth and Allen Anderson, of Fees & Burgess, P.C., will help educate both buyers and sellers in the domestic and international arenas of changes found in the new and recently-released version of INCOTERMS ® 2010, which become effective January 1, 2011. This meeting will be hosted at the Holiday Inn, Research Park, conveniently located on University Drive.

January, 26, 2011, Huntsville, Al; 8:00 a.m.– 4:00 p.m. (CST), ABC Offices, Madison, Al
Risky Business in Construction Contracting: Reducing Risk and Increasing Profitability
This day-long program, presented by Allen Anderson, Jeff Roth, and Ryan Blount, of Fees & Burgess, P.C., is a must for focusing construction industry contractors on areas of business and compliance risk, and reviewing strategies for reducing and eliminating them.

April 14, 2011, Las Vegas, NV (In conjunction with IPC APEX EXPO)
Special Session: Contracting with the Customer: What the EMS Executive Needs to Know
This unique workshop presented by Jeffrey L. Roth and Allen L. Anderson, of Fees & Burgess, P.C., addresses the specific issues EMS companies face while contracting. Participants will be led through the contracting lifecycle between an electronic manufacturing services (EMS) provider and its customer, starting with the initial engagement and signing of a nondisclosure agreement, through the bid process and formal contract negotiation, to resolution of disputes under the applicable contract(s).

If you would like more information , on these and more seminars, please go to www.feesburgess.com.

HR CORNER

FEES & BURGESS, P.C.

Volume 6 Issue 12 December 2010

SPEAKERS

FEES & BURGESS, P.C., provides speakers, training programs, seminars, and webcasts for various trade associations; business groups; and clients. For information regarding a program, contact seminars@feesburgess.com.

NEWSLETTERS

FEES & BURGESS, P.C., also publishes *F&B Quarterly Bytes,* focusing on multiple practice areas; and *F&B SCM Memo,* focusing on the supply chain management industry. To receive any of these newsletters, please e-mail newsletters@feesburgess.com with your contact information.

To remove your name from our mailing list, please e-mail newsletters@feesburgess.com.

Michael L. Fees
mfees@feesburgess.com

C. Gregory Burgess
gburgess@feesburgess.com

Allen L. Anderson
anderson@feesburgess.com

Jeffrey L. Roth
jroth@feesburgess.com

FEES & BURGESS, P.C.
213 Green Street
Huntsville, Alabama 35801
Telephone (256) 536-0095
Facsimile (256) 536-4440

www.feesburgess.com

Stacy L. Moon
smoon@feesburgess.com

Leah M. Green
lgreen@feesburgess.com

Ryan G. Blount
rblount@feesburgess.com

Lauren A. Smith
lsmith@feesburgess.com

HR Corner should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only. Anyone needing specific legal advice should consult an attorney.

"No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers."