

Potential Benefits Liabilities For “Non-Employees”

Problem

Employers routinely utilize leased employees and independent contractors in order to reduce their operating costs and fill in gaps in workforce numbers and specialized capabilities. But if an employer misclassifies workers for purposes of the tax and benefit laws, THERE COULD BE serious tax consequences for the employer. A “non-employee” may, depending on the facts and circumstances, be a common law employee of the employer under the relevant tests and, as such, be eligible to participate in the employer’s benefit plans. A misclassification of such individual could result in current and retroactive liabilities for plan coverage, as well as IN the disqualification of a qualified plan.

How can an employer avoid misclassifying leased employees and independent contractors for benefit plan purposes?

Solution

Determine whether, under the employer’s particular facts and circumstances, the worker’s relationship with the employer could rise to the level of that between an employer and a common law employee. Adjustments in the form or operation of the relationship and/or revisions to the written instruments governing the relationship may be advisable. And, most importantly, clearly define who is, and who is not, eligible to participate in the employer’s benefit plans. Most of the case law in this area centers on the very narrow issue of the eligibility definition in the plan. Although the Supreme Court has held that common law employees are employees of the employer for purposes of ERISA and participation in an employer’s benefit plans, courts in subsequent cases have held that the specific eligibility provisions of the plan are what determine who may, or may not, participate in the plan.

As the use of the various types of “non-employees” by employers increases dramatically, it is important for employers to properly manage their relationships with these individuals, and to avoid misclassifying such individuals for purposes of their employee benefit plans.

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