

## **Bainbridge Business Connection Presentation, 29 July 2011**

### **"Independent Contractors vs. Employees"**

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#### **Why is it important: Government is looking for tax dollars**

- New focus by the State of Washington – in 2009, nearly \$4 billion was paid out in unemployment claims. That's up from \$1.2 billion in 2008 and \$725 million in 2007. Cash strapped, the Employment Security is adding new investigators to search out sources for tax revenues.
- New focus by the federal government – agencies have been allocated money to look for misclassified employees and misclassified contractors. EEOC, DOL and IRS are all hiring hundreds of new investigators.

#### **Why is it confusing?**

- State has a 6 part test to distinguish between the two categories of "independent contractor" or "employee."
- IRS has a 20 part test.
- You don't always have to meet each part of the IRS test.

#### **State test:**

- Free from direction and control
- Service outside the course of business
- Customarily engaged in their own business to provide the service
- Meets IRS test
- Has a UBI number
- Maintains own financial books with income/expenses

**Federal test:** See handout ("Independent Contractors IRS Common Law Factors").

#### **What are the consequences to a business if they fail the tests?**

- Must pay back taxes
- Penalties are typically what you would have paid times 3
- Potential lawsuits from contractors or employees

**Washington Publication:** Washington L&I, <http://www.lni.wa.gov/IPUB/101-063-000.pdf>

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**NOTES:** Employment law is not clear-cut and changes constantly. "Independent Contractor" – what it is "depends" – it's got to pass the "giggle test" to see if it flies. Another criteria: clarity; that is, avoid "mushiness" between the line of "employee" and "independent contractor."