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**Managing
Risk**



Workers' Compensation

Winter 2009

Contractor or Employee? That Is The Question

Hiring someone as an independent contractor can save businesses significant sums by eliminating workers' compensation insurance, employee benefits and payroll taxes. But complex rules determine whether someone is an employee or a contractor. Getting them wrong can have serious consequences – back taxes, penalties, fines, lawsuits and damage to morale, to name just a few.

Discerning the difference between an independent contractor and employee can be a complex and imprecise art, especially when telecommuting blurs the use of location as an indicator of employment status. The IRS has a comprehensive list of factors that it uses to determine a worker's status. [See chart on Page 2.] Many states have additional requirements, which are

supplemented by numerous legal rulings.

Generally speaking, the more independence workers have, the more likely they can be classified as independent contractors. Therefore, employers should also look at whether the worker advertises his services to others, employs assistants or purchases his own workers' comp insurance. You can also fill out an IRS form SS-8 to determine worker status. ■



Employee	Independent Contractor
Worker must obey instructions concerning when or how to perform the job.	Worker responsible for the outcome of the job and can determine how it is to be done.
Company provides training.	Worker may be licensed by a state board; may have invested considerable sums in training.
The job is “integrated,” or central to the company’s operations — the more integrated, the more likely the worker will be considered an employee.	The job is not necessarily integrated to the company’s operations.
Services must be performed by a particular person.	Work can be performed by anyone.
The company hires, supervises or pays a worker’s assistants.	Worker can hire assistants and is responsible for their pay.
Worker has an ongoing relationship with the company.	Worker advertises or otherwise makes his/her services available to the general public.
Company sets the work hours.	Worker can set his/her own work hours.
Company requires full time work at its business.	Worker can work for more than one company at the same time.
Company controls where the work is performed.	Worker determines where the work is performed.
Company determines the order in which tasks are to be done.	Worker controls task order.
Company requires oral or written reports.	
Worker receives payment by hour, week or month.	Independent contractors are usually paid on a per job or commission basis.
Company provides tools and materials.	Worker has made a significant investment in tools or facilities.
Company pays travel/ business expenses.	Worker can realize a profit or loss from a job.
Company can discharge a worker for reasons other than not meeting a contract’s terms.	Worker has a contract with the company.
Worker can usually quit without liability for failure to complete a job.	Worker liable for completing a job according to contract.

Pharmacy Costs Spike

Pharmacy costs in the U.S. workers’ compensation industry spiraled by 11.91 percent per injured worker in 2007, according to the 2008 Annual Drug Trends report by pharmacy services provider PMSI. The rise easily outpaces inflation and the 8.67 percent rise seen in 2006.

The survey of the company’s clients matched earlier data by the National Council of Compensation Insurance. It attributed 39 percent of the cost per worker increase to higher drug prices, with the remaining 61 percent coming from utilization.

Among the report’s other findings:

- ✦ Six medications accounted for 65 percent of utilization increases
- ✦ More than 85 percent of costs were associated with claims more than three years old
- ✦ New brand-name medications in 2006 and 2007 contributed to 2.54 percent of spending
- ✦ Generic drugs launched in 2007 saved 1.97 percent
- ✦ Narcotic analgesics remain the top drug class, representing 35 percent of total drug spending
- ✦ Average claim age increased by 6.27 percent
- ✦ Narcotic analgesics accounted for nearly 50 percent of utilization growth. ■

Study Finds Gap Between Risk and Management

Two out of three U.S. private companies experienced management or professional liability events in the past five years, yet 37 percent of U.S. businesses do not purchase any type of management or professional liability insurance, according to a recent study by Chubb Specialty Insurance.

“Despite a down economy and an increase in risks, private companies may not be purchasing sufficient management liability insurance to help protect their bottom line from a costly liability lawsuit,” said Lisa Jones, vice president, Chubb & Son. Jones said that tight credit conditions increase the risk these companies face because it can be difficult to raise money needed to defend lawsuits or continue business operations. “Today’s global economy has created new opportunities and new risks for companies of all sizes,” Jones said.

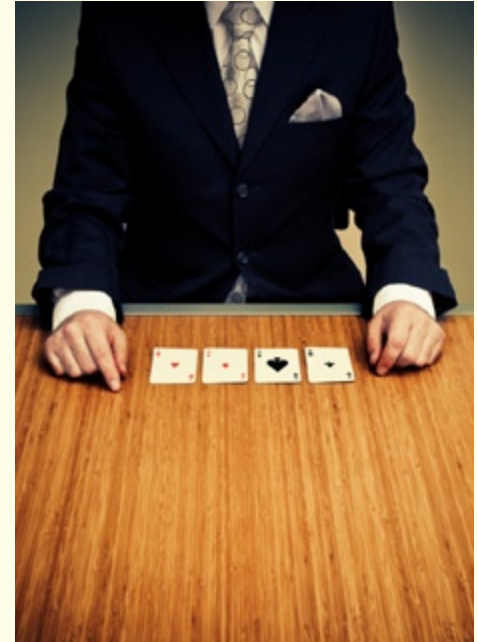
The survey found that 63 percent of participants do not purchase employment practices liability or directors and officers liability, while 91 percent failed to purchase cyber liability insurance.

One in three of the companies that do

not purchase employment practices liability, crime or directors and officers liability insurance cited “low risk/no exposure” as the reason, while one in two companies do not purchase cyber liability insurance for the same reason. However, 31 percent of companies expect to experience a crime-related event in 2008, 26 percent a directors and officers liability incident and 19 percent an employment practices liability incident.

But survey participants were less concerned in 2007 than in 2005 about the potential financial damage caused by lawsuits filed for wrongful termination, discrimination or sexual harassment (23 percent vs. 43 percent), employee/retiree benefit issues (11 percent vs. 18 percent) and directors and officers liability issues (5 percent vs. 9 percent).

Even so, the survey found that 62 percent



of U.S. private companies have experienced some type of event related to management/professional liability in the past five years, including workplace crime (32 percent), employment practices liability (24 percent) and directors and officers liability (22 percent).

Pollara, a public opinion and market research firm in Canada, conducted the Chubb Private Company Risk Survey in late 2007. The firm interviewed specialty insurance decision-makers at 469 U.S. for-profit companies. Chubb also sponsored the survey in 2005 and 2003. ■