



Case of the Week: Independent Contractors and Retirement Plan Participation

Our ERISA consultants on the Columbia Management Learning Center Resource Desk regularly receive calls from financial advisors who have questions about issues related to the definition of eligible employees for retirement plan coverage purposes.

Through our relationship with the Columbia Management Learning Center, we routinely guide Columbia Management's financial advisor partners through the IRS and Department of Labor rules and regulations that govern the treatment of employees and nonemployees (e.g., independent contractors) with respect to plan coverage issues.

A recent call with an advisor in Texas is representative of a common inquiry involving independent contractors and retirement plan eligibility. The advisor asked: **Should independent contractors be included in the retirement plan of the employer who contracts for their services?**

Highlights of Recommendations

- Generally, an independent contractor is not an employee of the business for which he/she provides services and, therefore, would not be eligible to participate in the business' retirement plan.
- However, an independent contractor could contribute to his/her *own* retirement plan based on his/her self-employment income.
- The determination of whether a person who provides services to a business is considered an employee or independent contractor is based on the degree of "control or direction" provided by the business to the worker, and is dependent upon the facts and circumstances of each case.
- As a general rule, an individual is an independent contractor if the business for which he/she performs the services, does not control the means or methods used by the worker to accomplish the promised result.
- It is important for the business owner to look at the entire relationship with the worker, consider the degree of his/her right to direct and control the worker's actions and, finally, to document each of the factors the business owner uses to arrive at the determination.
- The IRS has some helpful online information on determining worker status at www.irs.gov/businesses/small/article/0,,id=99921,00.html
- As an alternative, the business can ask the IRS to make a formal determination on the worker's status by filing IRS Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*.

Conclusion

Determining whether a worker is an employee or independent contractor for retirement plan coverage purposes can be tricky, because it is based on the facts and circumstances of each case. With the expert guidance of the Columbia Management Learning Center, advisors can provide their clients with the knowledge and tools to help them make the correct call.