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DID YOU KNOW?

According to recent statistics, only 5% of all lawsuits that are filed go to trial.

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Is My Business Misclassifying Employees as Independent Contractors?

By: Attorney Spencer C. Pittman

A recent study found up to 30% of workers in America are misclassified by businesses as independent contractors. Misclassifying an employee as a contractor can have severe legal and financial consequences for a business, including \$1,000 per misclassified employee, wage claims, and, in serious instances, even prison time. The U.S. Dept. of Labor (DOL) and IRS have separate standards for distinguishing contractors from employees, and these laws are constantly evolving.

In mid-2023, the DOL is expected to implement a dramatic shift in the way employers classify workers under the Fair Labor Standards Act (FLSA). The new rule proposes to restore a multifactor, totality-of-the-circumstances analysis, which, unlike the current rule, would eliminate assigning a predetermined weight to certain factors. The proposed rule instructs employers to examine a non-exhaustive list, which includes (i) the worker's opportunity for profit or loss, (ii) the nature, reason, amount, and value of the worker's investments, (iii) permanency of the work relationship, (iv) nature and degree of control (such as scheduling or supervision), (v) the extent the work is integral to the business, and (vi) the necessary skill of the worker. On the other hand, the IRS uses three tests (each with a variety of factors) to determine the classification. These include behavioral control, financial control, and relationship type tests. The behavioral test focuses on the extent the business can control the worker, the financial test focuses on how the worker is paid (among other factors), and the relationship type test focuses on how the worker and the business perceive their relationship (such as if the parties have a written agreement).

Misclassification may lead to liability for civil penalties (including a wage claim) to reimburse the worker for minimum wage and overtime pay under the FLSA or other legal mechanisms. A state or federal department of labor may seek fines, damages, or other financial reimbursement for the misclassified worker based on the denial of benefits and labor standards protections. Intentional misclassification can lead to more severe penalties, including but not limited to the possibility of a year in prison. A business is also required to withhold and pay federal employment taxes and income tax for its employees. The IRS may levy penalties and hold a business liable for taxes if the business misclassifies an employee without a reasonable basis.

Is your business prepared for the DOL's new rules on contractor/employee classifications and 100% confident its workers are properly classified, even if a worker could arguably fit into either category? If you are concerned you are within the 30% of businesses misclassifying workers or need an independent contractor agreement based on the new DOL rule, contact Attorney Spencer Pittman at spencer@wintersking.com.



Trademarking a Name or Logo Can Protect Your Business from Infringement

By: Attorney Spencer C. Pittman

Trademarks are words or designs (also called marks) identifying and distinguishing the source of goods or services of a company from those of another. A trademark is a distinctive sign or symbol that helps consumers recognize and identify the origin of a particular product or service. Using a name or logo that is infringing on another's mark can be costly and may require complete rebranding and reimbursement of attorneys' fees.

Trademarks can be registered at the state-level or with the U.S. Patent and Trademark Office (USPTO) to provide legal protection to the owner of the mark. Unlike state-registration, federal registration with the USPTO requires the use of the mark in interstate commerce. If the mark is registered with the USPTO, the owner has the "exclusive right" to use the mark in connection with their products or services and can prevent others from using a similar mark that may cause confusion among consumers.

The owner of an unregistered mark still has legal rights. A "common law" trademark is established through the use of the mark in commerce. The common law trademark owner has the right to prevent others from using a similar mark that may cause confusion among consumers in the same geographic area. Contact Wes Carter at wccarter@wintersking.com if you want to start the trademark process for your business.

Winters & King Hires New Attorney/Agent

The Firm is proud to announce the addition of a new attorney and literary agent to its team, Alyssa LaCourse.

Ms. LaCourse joined the firm in March 2022. Her legal practice primarily focuses on nonprofit organization, business, and intellectual property law. She is also a literary agent representing both fiction and nonfiction authors.

Ms. LaCourse is a Tulsa native. She received her B.A. in Writing from Oral Roberts University, magna cum laude, and her J.D. from the University of Tulsa College of Law, with highest honors.



In law school, Ms. LaCourse received multiple awards for academic excellence, legal research and writing, and trial skills. Before graduating law school, Ms. LaCourse worked in full-time ministry and publishing. She clerked at Winters & King in 2021 before taking and passing the bar examination.

If you have any legal or literary questions, you can contact Ms. LaCourse at alacourse@wintersking.com.



Reviewing and Updating Your Estate Plan

Failing to review and update your estate plan after a significant life change can result in your estate ending up in the hands of someone unintended, *including the government*. Circumstances that may warrant the need to update your estate plan include certain significant life events including marriage, divorce, the birth or adoption of a child, or the death of a beneficiary or executor. Other circumstances may include a material change in assets (such as the acquisition or sale of real property or a new home) or a major change in tax laws or the laws of your state.

If you would like your estate plan reviewed and updated by Winters & King's estate planning attorney, B.C. Lee, call 918-494-6868 or email bcclee@wintersking.com to set up an appointment.