

Popular Threads on Solosez

Lawyer's Obligations As An Employer?

I've never been an employer before, but I now need to hire an assistant. I'm wondering what money-related obligations I will have as The Employer. For example, let's say I were to pay my new Legal Assistant (LA) hourly for a 40-hour week at \$15.00/hr. Could I just pay the \$600.00 per week and be done with it (i.e., have LA take care of all federal and state taxes without any oversight, input, or accounting by me), or must I do things like prepare year-end statements for the IRS, Social Security, etc.?

As an employer you will have many obligations with respect to taxes, social security, workers compensation, unemployment compensation insurance, etc. You might want to consider using a payroll service.

David Masters, Montrose, Colorado

Not to disagree with David's fine advice, but as a single employer you may find that you have little obligations with respect to your one employee. State law may differ, but in Alabama you don't need worker's compensation if you have only one employee (5's the minimum). If you gross less than \$500,000 per year there are no FLSA issues to worry about (no minimum wage, no overtime). Most solos I know don't make that much (some do).

Given that, you may get away with calling her an independent contractor and simply pay her directly and let her worry about taxes. The IRS is easier on this issue than the FLSA is for bigger employers. Your employee however may not like having to pay her own Social Security tax - almost 15% straight off the top.

Of course state law may differ and you should consult your state laws before following my advice.

Sterling L. DeRamus, Birmingham, Alabama

As David suggested, you need a Payroll Service to prepare pay checks either weekly or bi-weekly for your assistant. At the end of the year, the Payroll Service will generate a 1099 for your employee or assistant at the end of the year. The income is reported to IRS. It is now the responsibility of the employee to deal with the applicable taxes when he/she files a tax return. This is how many small firm employers handle the payroll taxes.

Jolly C. Anaba



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Hire Paychex, ADP or Paymaxx (now Compupay). You will be glad you did. Short answer is no you should not try to fit assistant in as independent contractor and should file and withhold as required.

Darrell G. Stewart, San Antonio, Texas

Before you decide to treat him as an independent contractor, read this response to the wage claim post that was just made:

Whether your client is a true independent contractor or an employee is a matter of various tests though. Does he set his own hours? Does he bring his own tools? Is everyone there an independent contractor or is everyone else an employee? Is this traditionally a job for independent contractors? To what extent does he control the job conditions? Etc., etc.

Many employers try to classify employees as independent contractors to avoid overtime. It doesn't work usually. Bottom line: don't take any crap from these people and go get 'em!

Sterling L. DeRamus, Birmingham, Alabama

Not sure what jurisdiction the original poster was in, but you cannot make an "assistant" an independent contractor in California. To be an independent contractor, you must be able to do your work somewhat independently, hence, secretaries, receptionists, and assistants are usually not allowed to be treated as an independent contractor, whereas a contract attorney can. Not sure if this is applicable to states outside of California.

Michael A. Blake, Milford, Connecticut

You're a good lawyer. Hire an accountant. Yes, if the new hire is an employee, then you'll have all the withholding and unemployment comp issues. You should have the accountant help you with all your business records and tax reporting obligations. A payroll service is nice for a very limited purpose, but doesn't cover all of the issues.

Consider the accountant to be a source of clients too. They have good referrals.

Bruce Dorner, Londonderry, New Hampshire

An easier way to handle this is to use an employee leasing company. You can either take someone from their pool or hire your own person. The employee fills out a timesheet weekly that you sign. The time sheet is submitted to the leasing company. The employee is paid and all

employment matters are handled, then you are billed from the leasing company. You don't need workman's comp. You don't worry about withholding or making any type of payments or filings. Some leasing companies have pretty good insurance plans available too.

The cost is marginal compared to the increased effort of maintaining an employee otherwise. Better, when that employee needs time off, the leasing service can provide you with another warm body.

There are tons of companies that do this and the prices are very negotiable depending on what you need. Kelly is probably the best known, but any metro area will literally have dozens either known as temp firms or employee leasing companies.

Roger Traversa

An accountant friend of mine said, "It takes money to make money."

David L. Masters, Montrose, Colorado

Yeah, I'm a hypocrite! But what else can we be in these days?

Actually, though the test for independent contractor for the IRS is different for purposes of the FLSA. I know that seems weird, but I have fought and won an FLSA case against an employer where the IRS accepted their designation as an independent contractor. Don't ask me why, but I think the IRS is just not concerned as they get their money from one party or the other. Like I said, if you're small potatoes (under \$500K) the FLSA is not going to apply.

Nevertheless, state law may be entirely different on this point as another poster pointed out. California has some good pro-employee employment laws. Alabama? Well let's just say that some people consider it progress that we no longer hang employees for minor infractions. (you can still fire them though). We have virtually no wage law (just a sales commission protection law), no race or sex discrimination laws (an age one though!) and it took an act of the legislature to get protections for jury duty and worker's compensation retaliation provisions after the courts denied any relief. Our Supremes have ruled time and again that there is no public policy exception in Alabama. Heck, there's no public policy period as far as I can tell. If you are under 15 employees you can discriminate on the basis of sex and religion to your heart's content. Think pregnant women should stay at home barefoot in the kitchen? Then tell them so. Require all of your employees to become Jehovah's Witnesses. No repercussions. Section 1981 prevents race discrimination, but although it applies across the board pretty much a small employer will still probably get away with it. You can't sexually harass, but that's only because it's a tort. You can ask for sexual favors one time though and not have to worry about it.

There are a few other states like that (Mississippi I believe) and I'm not sure where the original poster was from but check with your state laws

before hiring.

Sterling L. DeRamus, Birmingham, Alabama

Be careful. This is only true if the employee does not engage in ANY commerce. Case law on this issue is all over the map; better safe than sorry

Jon Egan

If you know a way past the \$500K limit in Federal Court, I'm all ears. But I've never seen any caselaw exception to this rule. The statute is pretty clear that one is not an enterprise engaged in commerce unless:

(s)(1) " Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise that--

(A)(i) has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and

(ii) is an enterprise whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated);

...

I routinely turn down cases where the defendant does not meet this burden, but if you know of some way around it, I'd love to find a solution.

Sterling L. DeRamus, Birmingham, Alabama

Minor correction: Non-employees receive 1099s; employees receive W-2s.

Susan K. Ashabraner

Check this out: <http://www.irs.gov/faqs/faq-kw54.html>.

Susan K. Ashabraner

To rule out a few variables, here's more info: (1) Jurisdiction is Florida; (2) I will not need workers' comp under my circumstances; and (3) annual gross volume of sales will not exceed \$500k, this year, anyway... :->

Also, I don't care whether I get to call the new hire an independent contractor, an employee, or otherwise; I just don't want to have to do any math or fill out any forms.

Ken S.

Don't do this yourself. You'll drive yourself crazy with all the hooey that's involved. Get a service such as Paychex. They don't charge enough for the service they provide. If you can't afford to use a payroll service then you can't afford an employee, IMHO.

David L. Leon , Dallas, Texas

You and employee CANNOT choose whether to consider her an employee or an independent contractor. If she meets the test for being an employee (lots of case law on issue), she is one, period. Can be VERY EXPENSIVE for the employer if you mess up on this one. Secretary would almost certainly be employee. If you have an employee, you MUST pay employment taxes and file federal tax forms (don't know about your state). IRS has very helpful publications for small businesses. Or use a payroll service, or hire through a company that is the actual employer (several lawyers I know use Resource Management, Inc., not sure if that is a local Co. or not).

Nanci Snow Bockelie, Salt Lake City, Utah

You just can't risk this, regardless of other's posts to the contrary. It is too dangerous to try to claim your in-office staff as independent contractors, particularly when there's only one staff. The link <http://www.irs.gov/faqs/faq-kw54.html> was sent to Solosez. It says, in part: "*How do you determine if a person is an employee or an independent contractor?*" The determination is complex, but is essentially made by examining the right to control how, when, and where the person performs services." Do you really want to maintain that your only staff person is free to come and go as he/she pleases? Telling them to be there to answer the phones when you cannot be there is an important reason to have staff. Payroll services and people leasing services require no math. You just write them the check for the amount they tell you which includes gross pay, their fess and your portion of matching funds.

On a related note, a lawyer who wrote a nice paper in 2004 on whether law office staff have to be paid overtime under the amendments to FLSA allowed me to post his paper online. His 25 page paper, with tables, in PDF can be downloaded here: <http://tinyurl.com/lcf9j> I don't know enough about the topic to discuss whether the IRS follows the same test or cares. But seeing paralegals used as the example of employees that have to be paid overtime got most firms around here to change their no overtime policies, except for lawyers of course.

Jim Calloway, Oklahoma City, Oklahoma

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