

# SECTION 1: THE EMPLOYER-EMPLOYEE RELATIONSHIP

---

## TABLE OF CONTENTS

Section	Page
1.1	Importance of the Determination..... 1-2
1.2	Employee vs. Independent Contractor ..... 1-2
1.2-1	Common Law Test..... 1-3
1.2-2	Reasonable Basis Test..... 1-5
1.3	Employment Status Determined by Law..... 1-10
1.3-1	Statutory Employees..... 1-10
1.3-2	Statutory Nonemployees ..... 1-11
1.4	Temporary Help Agency Employees..... 1-12
1.5	Leased Employees ..... 1-12
1.6	Employees Under Other Federal and State Laws..... 1-14
1.6-1	Federal Wage-Hour Law ..... 1-14
1.6-2	State Wage-Hour Laws ..... 1-15
1.6-3	State Income Tax Withholding Laws ..... 1-15
1.6-4	State Unemployment Insurance Laws..... 1-15
1.6-5	State Disability Insurance Laws..... 1-17
1.7	Worker Misclassification: Enforcement and Penalties..... 1-17
1.7-1	IRS Penalties..... 1-17
1.7-2	IRS Enforcement Efforts ..... 1-18
1.7-3	FLSA Complaints Filed With the Department of Labor..... 1-20
1.7-4	State Unemployment Agencies ..... 1-20
1.8	Proof of the Right to Work in the U.S. .... 1-20
1.9	New Hire Reporting ..... 1-33
1.10	Review Questions and Exercises ..... 1-42

# **SECTION 1: THE EMPLOYER-EMPLOYEE RELATIONSHIP**

---

Perhaps the most basic decision an employer must make when hiring a worker to perform a service is whether the worker is an employee. Not all workers are employees, and the employer's determination affects the entire relationship between the employer and the worker. Hiring employees gives the employer the benefits of controlling the methods and results of the work to be done, having full-time workers who work only for the employer, and having workers who have been trained by the employer.

The employer-employee relationship also brings obligations—income and employment tax withholding, unemployment insurance contributions, workers' compensation premiums, etc. This section examines the criteria that determine whether a worker is an employee, as well as the employer's obligations once the employer-employee relationship is established and the penalties resulting from misclassification of a worker as a nonemployee.

This section also outlines an employer's obligation to determine whether a newly hired employee is eligible to work in the United States under U.S. immigration laws and the requirement to report new hires to state government agencies to aid in their effort to enforce child support obligations and prevent fraud in obtaining unemployment compensation, workers' compensation, and public assistance.

## **1.1 Importance of the Determination**

Under the Internal Revenue Code (IRC), an employer must withhold income, social security, and Medicare taxes from employees' wages, and it must match the withheld social security and Medicare taxes with employer funds. Under the Federal Unemployment Tax Act (FUTA), covered employers must pay a certain percentage based on each employee's wages to support federal and state unemployment insurance programs (public sector employers are exempt).

Most states and many local governments also require income tax withholding from employees' wages, and all states require most employers to pay "contributions" based on their employees' earnings into state unemployment insurance funds. A few states also require employers to withhold unemployment insurance taxes from employees' wages. Several states require employers to withhold amounts from employees' wages to fund state disability insurance benefit payments and make contributions to the disability plan out of their own funds. Most companies have their own list of benefits and other entitlements they provide to employees as well (e.g., retirement plan, vacations, sick pay, health insurance, etc.).

While this is not meant to be an exhaustive listing of all the obligations that face an employer once the employer-employee relationship is established, it provides some idea of why the initial determination of a worker's status is so important, and why many employers use workers who are not employees to perform services for them.

## **1.2 Employee vs. Independent Contractor**

Most of the problems employers have in regard to worker classification arise when determining whether a worker is an employee or an independent contractor. It is often much less expensive for a business to use independent contractors to provide services because the taxing and reporting requirements are much less costly than they are for employees. So long as the independent contractor provides the employer with a valid Taxpayer Identification Number (TIN), the employer's only obligations are to give the contractor a Form 1099-MISC (see Appendix page A-261) at the end of the year stating how much the contractor was paid for the services rendered (if the total was at least \$600) and to send a copy of the form to the Internal Revenue Service (see Section 8.12-1 for more details).

## Section 1: The Employer-Employee Relationship



**WATCH OUT** Several states have expanded their new hire reporting requirements to include reporting of independent contractors. See pages 1-36 — 1-41 for the new hire reporting requirements of individual states. If states in which an employer operates require reporting of independent contractors, the accounts payable department must be notified to ensure compliance.

Social security and Medicare taxes need not be withheld from an independent contractor's payments or matched by the employer. No federal or state unemployment insurance taxes are required, and employee benefits do not have to be funded, paid, or administered on their behalf.

Because misclassification of workers as independent contractors rather than employees has led to substantial losses in revenue for the federal government and the failure to properly credit earnings for social security and unemployment benefit purposes, the IRS is focusing more resources on payroll tax audits for worker misclassification. Therefore, employers should be sure their human resources and payroll departments are familiar with the tests for determining whether a new hire is an employee or an independent contractor.

### 1.2-1 Common Law Test

While there is no uniform definition of an employee under all payroll laws, most workers can be classified as either employees or independent contractors once the “common law test” has been applied. The IRS, for example, relies on the common law test in making worker status determinations for the purposes of federal income tax withholding and the withholding and payment of employment (social security, Medicare, and federal unemployment) taxes. (Other tests and exceptions are discussed later in this section.)

**Right to control is the key.** Under the common law test, if the employer has the *right to control what work will be done and how that work will be done*, then an employer-employee relationship exists and the worker is a common law employee. This is true regardless of whether the employer actually exercises the right on a regular basis.<sup>1</sup> However, if an individual is subject to the control or direction of another only as to the results to be accomplished, and not as to the details by which those results are accomplished, the individual would not be an employee under the common law test. It makes no difference what the worker is called by the employer. An “agent” or “contractor” is still an employee if the employer controls the work to be done.<sup>2</sup>

**IRS looks to identify key control factors.** The IRS has sought to streamline the process for determining whether a worker is an employee or an independent contractor by identifying those factors that most clearly indicate the degree of control or independence in the relationship of the worker and the business. Evidence of the degree of control and independence can be grouped into three general types or categories: behavioral control, financial control, and the type of relationship between the parties.<sup>3</sup>

*Behavioral control.* Factors that determine behavioral control, which is the right to direct and control the details and means by which the worker performs the work to be done, include:

- *Level of instructions the business gives the worker*—Evidence that a worker is subject to detailed instructions about when, where and how to work tends to show the worker is an employee. Even if no such instructions are given, the right to control through instructions may be sufficient evidence of employment status. The important thing is whether the business has the right to control the details of the worker's performance or has instead given up that right.
- *Level of training provided to the worker*—an employment relationship is indicated where the business provides periodic or ongoing training regarding particular procedures to be followed and methods to be used in performing the work. Independent contractors generally rely on their own methods.

---

1. IRS Reg. §31.3121(d)-1(c)(2); §31.3306(c)-2; §31.3401(c)-1(b).  
2. IRS Reg. §31.3121(d)-1(c)(2); §31.3401(c)-1(e).  
3. IRS Pub. 15-A, Employer's Supplemental Tax Guide; Training 3320-102, 3-97.

## *The Payroll Source*

*Financial control.* Factors that must be considered when determining whether the business has the right to direct and control the economic aspects of the worker's job include:

- *Whether the worker has unreimbursed business expenses*—Independent contractors are more likely to have unreimbursed business expenses than employees. The IRS considers fixed ongoing costs that are incurred whether or not work is being performed as particularly important. However, employees may also have unreimbursed business expenses in connection with their employment.
- *Whether the worker has a substantial investment in the work*—While it is not required, independent contractors often have a significant financial investment in the facilities they use to perform services for a business.
- *Whether the worker's services are available to the public*—Evidence that the worker offers his or her services to the public at large (e.g., business cards, phone listing, marketing materials) indicates independent contractor status, although employees can work for more than one employer at a time.
- *How the worker is paid*—Employees generally are paid by the hour, week, or month, while independent contractors are usually paid by the job. However, some independent contractors, such as lawyers or accountants, are customarily paid by the hour.
- *Whether the worker can realize a profit or incur a loss*—All this financial evidence helps determine whether a worker has the opportunity to make a profit or suffer a loss. If so, independent contractor status is indicated.

**Type of relationship.** There are several factors that generally indicate how the worker and the business perceive their relationship to each other and their intent regarding the right to direct and control the manner and means of the worker's activities. These factors include:

- *Whether there is a written agreement*—A written contract may indicate the type of relationship the parties intended to create.
- *Whether employee-type benefits are provided*—If the business provides the worker with benefits usually provided to employees, such as paid vacations, health and life insurance, sick pay, or a retirement plan, an employment relationship is indicated.
- *The term of the relationship*—If a worker is hired with the expectation that the relationship will continue indefinitely rather than for a specific period or project, this is generally evidence that the intent was to create an employment relationship.
- *Whether the worker's services are an important aspect of the business's regular operations*—If a worker provides services that make up a key aspect of the entity's regular business activity, it is likely that the business will have the right to direct and control the worker's activities.



**SOME FACTORS AREN'T IMPORTANT** Because of changes in the realities of the workplace over the years, the IRS has identified several factors which it feels are not important in making worker classification determinations. They include part-time or full-time work, the location of the work, and hours of work.

**Example 1:** Fred is an experienced plumber who agreed to perform full-time services for The Building Group, Inc. at its construction sites. He uses his own tools and performs the work in the order designated by TBG, according to their specifications. TBG supplies all Fred's materials, frequently inspects his work, pays him on a piecework basis, and carries workers' compensation insurance on him. Fred does not advertise his services or hold himself out as available to perform similar services for other companies. Fred is an employee of TBG.

## **Section 1: The Employer-Employee Relationship**

**Example 2:** Rusty's Auto Sales, Inc. provides a garage with two bays and a lift for Harold to perform car repair services. Harold brings his own tools and supplies and does all of Rusty's body work and painting. Harold also solicits business from insurance adjusters and others. Harold hires his own helpers, can fire them for poor performance, and sets their work hours. He can determine the prices for work done and is compensated by a percentage of the gross revenue from work done in the repair shop. Harold is also responsible for any collected charges. Harold is an independent contractor whose helpers are his employees, not those of Rusty's.

**Example 3:** Lisa, a computer programmer, loses her job after a layoff at Overbyte, Inc. However, Overbyte agrees to pay Lisa a flat amount to complete a one-time project to create a new product. The length of time for completion of the project is unclear, and there is no guaranteed minimum payment for the job. The only instructions Overbyte gives Lisa are the project specifications. Lisa and Overbyte agree in writing that Lisa is considered to be an independent contractor, is required to pay federal and state taxes, receives no benefits from Overbyte, and will receive a 1099-MISC from Overbyte. Lisa works at home and is not required or allowed to attend meetings of the software development group. Lisa is an independent contractor.

**Example 4:** Anne rents a taxi cab from Greenfield Cab Co. for \$150 per day. Anne pays the cost of maintaining and operating the cab, and she keeps all fares she receives from her riders. Although she receives the benefit of Greenfield's radio communications equipment, dispatcher, and advertising, these items benefit both parties. Anne is an independent contractor.

**Managers are employees, too.** Federal payroll tax laws apply to all levels of employees, including supervisors, managers, and other executives. A corporation's officers, as well, are generally covered, unless they perform only minor services and neither receive nor are entitled to any compensation. Keep in mind, however, that managerial employees are most likely exempt from coverage under other employment-related laws, such as the Fair Labor Standards Act and the National Labor Relations Act. Members of a corporation's Board of Directors are not employees of the corporation with respect to services performed as a director.

**Length of employment makes no difference.** So long as an individual meets the common law test for employment status, a part-time or temporary employee is covered under the federal payroll tax laws. The number of hours or days worked makes no difference. (See Section 1.4 for the proper treatment of workers hired through a temporary help agency.)

**Example:** Rose, a proofreader and copy editor, works on a part-time basis for Book Jacket, Ltd. on their premises and is paid by the page. Her work is reviewed by a production editor, and she can be discharged or can quit at any time. She also works for other publishers as time permits, since her hours at Book Jacket vary greatly. Rose is an employee of Book Jacket, although she may be an employee or independent contractor in her other jobs, depending on the circumstances.

### **1.2-2 Reasonable Basis Test**

Even though a worker meets the definition of an employee under the common law test, an employer may treat a worker as an independent contractor exempt from federal payroll tax laws if it has a "reasonable basis" for doing so, as determined by §530 of the Revenue Act of 1978.<sup>4</sup> The reasonable basis may consist of one or more of the following, as well as any other reasonable basis:

- court decisions, published IRS rulings, IRS technical advice sent to the employer, or a private letter ruling from the IRS indicating that the worker (or workers in similar situations) is not an employee;

---

4. P.L. 95-600, as amended.

## *The Payroll Source*

- a past IRS audit of the employer (not one of its workers) that did not result in a finding of taxes owed or a penalty attributable to the employer's treatment of the worker (or workers in similar situations) as an independent contractor; or
- a longstanding, recognized practice in a significant segment of the employer's industry of treating workers in similar situations as independent contractors.

**Consistent treatment is a must.** In order to take advantage of the "safe harbor" provided by the reasonable basis test, the employer must treat the worker whose status is in question (and all similarly situated workers) consistently as an independent contractor and must file all federal tax and information returns for the period in question based on that treatment. The treatment must have been consistent since 1978 by the employer and/or its predecessor.<sup>5</sup>

**Example:** A worker who receives a W-2 form reporting income earned in a year or is asked to complete a Form W-4 providing the number of withholding allowances is not being consistently treated as an independent contractor, and the employer cannot use the §530 safe harbor.

The application of the reasonable basis test was clarified for periods beginning after December 31, 1996 by the Small Business Job Protection Act of 1996. Under these amendments to Section 530:

- Audits begun after December 31, 1996 may not be relied on unless they include an employment classification audit of the worker involved or a similarly situated worker.
- In making a "significant segment" determination, the IRS cannot require an employer to show that more than 25% of its industry treated similarly situated workers as independent contractors.
- In making a "longstanding recognized practice" determination, the IRS cannot require the employer to show the practice continued for more than 10 years or that it was in existence before 1978.
- There does not have to be an initial determination that the worker is an employee under the common law test before Section 530 can be applied.
- If an employer changes its treatment of a worker for employment tax purposes from an independent contractor to an employee, the employer may still claim Section 530 protection for the periods before the change in treatment.
- In determining whether two workers hold substantially similar positions, the IRS must take into account the relationship between the employer and the workers.
- Once an employer offers sufficient proof that it reasonably treated a worker as an independent contractor under Section 530 and complied with all information requests from the IRS, the burden of proving that the worker is an employee is up to the IRS.

*Failure to file Forms 1099-MISC in one year no bar to §530 relief in later years.*<sup>6</sup> An employer may be entitled to tax relief under §530 for a subsequent tax year even if it failed to file Forms 1099-MISC for workers it treated as independent contractors in an earlier year. So long as the employer is otherwise entitled to §530 relief for the subsequent year and files the appropriate returns for that year treating the workers as independent contractors, the IRS will not deny the employer relief from income and employment tax withholding obligations for those workers.

---

5. Rev. Proc. 85-18, 1985-1 CB 518.

6. ILM 200211037, 1-14-02.

## **Section 1: The Employer-Employee Relationship**

**Example 1:** After examining Ulloa, Inc.'s employment tax liability for 2006, the IRS determined that several of Ulloa's workers, whom Ulloa considered to be independent contractors, were employees for federal income tax purposes. Ulloa did not file 2006 Forms 1099-MISC for the workers, but it did file 2007 Forms 1099-MISC for payments made to them in 2007. Ulloa is not entitled to §530 tax relief for 2006 because of its failure to file Forms 1099-MISC for that year. However, such relief is available to Ulloa for 2007 because the forms were filed for that year, if it can show a reasonable basis for treating the workers as independent contractors during that year.

**Example 2:** After examining Morrissey Co.'s employment tax liability for 2006, the IRS determined that several of Morrissey's workers were employees for federal income tax purposes, rather than independent contractors. Morrissey filed Forms 1099-MISC for the workers for 2006, but not for 2007. Forms 1099 for payments made during 2008 were not yet due at the time of the audit. Morrissey is not entitled to §530 relief for 2007, but if it timely files Forms 1099-MISC for 2008, it may be entitled to §530 relief for 2008.

**Example 3:** After examining Grant Corp.'s employment tax liability for 2006, the IRS determined that several of Grant's workers who had been treated as independent contractors were actually employees for federal income tax purposes. Grant filed Forms 1099-MISC for about half of those workers for 2006, and was considering whether it should file Forms W-2 or 1099-MISC for 2007 at the time of the audit. Grant is not entitled to §530 relief for 2006 as to the workers for whom it did not file Forms 1099-MISC, but if it timely filed Forms 1099-MISC for those workers for 2007, it may be entitled to such relief for 2007.

**Notice of Section 530 must be provided by IRS.** Before a worker classification audit can begin, the IRS employee conducting the audit must give the employer written notice of the availability of the Section 530 safe harbor protections (see page 1-8).<sup>7</sup> If the audit does not begin with worker classification issues, the notice does not have to be provided until such issues are brought up.

**IRS auditors must be "liberal" in applying Section 530.** The IRS training manual on worker classification audits requires examiners to "liberally construe" employers' claims that they have a reasonable basis for treating a worker as an independent contractor. They also must consider whether the safe harbor applies even if the employer does not raise the issue.



**WATCH OUT** Employers that make payments to workers covered by the Section 530 "reasonable basis" test must report those payments to the workers on Form 1099-MISC (see Section 8.12-1) in Box 7. Section 530 workers must pay their own social security and Medicare taxes (but not their employer's share) when they file their personal income tax return (Form 1040). The instructions for recipients of Form 1099-MISC tell such workers to report the amount in Box 7 on the "Wages, salaries, tips, etc." line of Form 1040 and to complete and attach Form 8919, *Uncollected Social Security and Medicare Tax on Wages* (see Appendix page A-398). Form 8919 was introduced by the IRS in November 2007 in an effort to clarify the social security and Medicare tax payment and reporting obligations of common law employees who are treated as independent contractors under Section 530.

---

7. Publication 1976, Independent Contractor or Employee?

# SECTION 530 RELIEF REQUIREMENTS

**YOUR** business has been selected for an employment tax examination to determine whether you correctly treated certain workers as independent contractors. However, you will not owe employment taxes for these workers if you meet the **relief requirements** described below. If you do not meet these **relief requirements**, the IRS will need to determine whether the workers are independent contractors or employees and whether you owe employment taxes for those workers.

## Section 530 Relief Requirements:

To receive relief, you must meet all three of the following requirements:

## I. Reasonable Basis

First, you had a reasonable basis for not treating the workers as employees. To establish that you had a reasonable basis for not treating the workers as employees, you can show that:

- You reasonably relied on a court case about Federal taxes or a ruling issued to you by the IRS; or
- Your business was audited by the IRS at a time when you treated similar workers as independent contractors and the IRS did not reclassify those workers as employees. You may not rely on an audit commenced after December 31, 1996, unless such audit included an examination for employment tax purposes of whether the individual involved (or any other individual holding a substantially similar position) should be treated as your employee; or

- You treated the workers as independent contractors because you knew that was how a significant segment of your industry treated similar workers; or
- You relied on some other reasonable basis. For example, you relied on the advice of a business lawyer or accountant who knew the facts about your business.

If you did not have a reasonable basis for treating the workers as independent contractors, you do not meet the **relief requirements**.

## II. Substantive Consistency

In addition, you (and any predecessor business) must have treated the workers, and any similar workers, as independent contractors. If you treated similar workers as employees, this relief provision is not available. If you are paying an individual who is providing services as a test proctor or room supervisor assisting in the administration of college entrance or placements examinations, the substantive consistency requirement does not apply with respect to services performed after December 31, 2006, (and remuneration paid with respect to such services). The provision applies if the individual (1) is performing the services for a tax-exempt organization, and (2) is not otherwise treated as an employee of such organization for purposes of employment taxes.

## III. Reporting Consistency

Finally, you must have filed all required federal tax returns (including information returns) consistent with your treatment of each worker as not being employees. This means, for example, that if you treated a worker as an independent contractor and paid him or her \$600 or more, you must have filed Form 1099-MISC for the worker. Relief is not available for any year and for any workers for whom you did not file the required information returns.

*The IRS examiner will answer any questions you may have about your eligibility for this relief.*





## **Section 1: The Employer-Employee Relationship**

**Technical services specialists get special treatment.** Section 530 specifically excludes from the reasonable basis test technical services specialists who work under a “three-party” arrangement involving the worker, a technical services firm, and the firm’s client. The status of such workers must be determined under the common law test, and they can be independent contractors or employees of either the technical services firm or the client company. “Technical services specialists” include engineers, drafters, designers, computer programmers, systems analysts, and other similarly skilled workers.<sup>8</sup>

**IRS’s role is strictly limited by law.** Section 530 specifically prohibits the IRS from issuing any regulations or rulings “clarifying the employment status of individuals for purposes of the employment taxes.”<sup>9</sup>

**Schools may treat exam proctors as independent contractors.** Under the Pension Protection Act of 2006, tax-exempt organizations may treat proctors or room supervisors who help administer college entrance or placement examinations as independent contractors under §530 beginning in 2007 if the proctors are not otherwise common law employees of the institution.<sup>10</sup>

**Form SS-8: IRS makes the status determination.** An employer can get a definitive ruling from the IRS as to a newly hired worker’s status as an employee or an independent contractor by completing Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding* (see Appendix page A-51). A ruling can be applied to a class of workers whose employment status is in question if the form is completed for one person who is representative of the class. Form SS-8 contains a series of questions designed to determine the extent of the employer’s right to control the result and means of the work being performed by application of the factors considered by the IRS. Call 1-800-829-3676 (1-800-TAX FORM) to order a copy of the form or go to the IRS website at [www.irs.gov](http://www.irs.gov).

Employers whose principal place of business or office is located in the eastern half of the U.S. should send the completed form to:

Internal Revenue Service  
SS-8 Determinations  
40 Lakemont Road  
Newport, VT 05855-1555

Employers whose principal place of business or office is located in the western half of the U.S. should send the completed form to:

Internal Revenue Service  
SS-8 Determinations  
P.O. Box 630  
Stop 631  
Holtsville, NY 11742-0630

While waiting for the IRS to respond to the Form SS-8 (which could take from several weeks to six months), the employer should treat the worker(s) in question as an employee, with all appropriate wages and taxes reported and/or withheld (see Sections 6, 7, and 8). This helps the employer avoid penalties and interest assessments if the IRS finds an employer-employee relationship. If the IRS rules the worker is an independent contractor, the employer is not entitled to a refund of any employment taxes paid.

In 2004, the Treasury Inspector General for Tax Administration (TIGTA) reported the results of a review it conducted of the SS-8 program. TIGTA found that there is no mechanism in place to follow up once employment status determinations are made using the form, and it recommended that compliance be made one of the goals of the program and that follow-up procedures be instituted to identify and measure

---

8. IRS Notice 87-19, 1987-1 CB 455; Pub. Law 95-600, §530(d).

9. P.L. 95-600, §530(b).

10. P.L. 109-280, §864; P.L. 95-600, §530(f).

## *The Payroll Source*

compliance. The report also recommended that a system of quality review be implemented to help ensure consistency among examiners and between processing sites.<sup>11</sup>

**Specific industry guidelines.** In 1994, the IRS issued guidelines to help its field personnel and industry members make determinations of employee/independent contractor status in the television commercial production and professional video communication industries (not including feature film or network television production). The nonbinding guidelines grew out of meetings between the IRS and industry representatives and are designed to identify the significant factors in determining the degree of the employer's right to control in the industry and the standards for determining whether these factors are met.

In 1997, the IRS issued worker classification guidelines for limousine drivers. In 1998, it finalized guidelines for moving van operators, as well as the garment manufacturing, hardwood timber, and furniture manufacturing industries. Other industry groups and workers for whom guidelines are being developed include physical therapists, home delivery services, and drywall contractors.

**Disputes can be heard by Tax Court.** The Tax Court has jurisdiction to determine whether the IRS has been correct in finding during an audit that one or more workers are employees or that the employer cannot claim the protection of Section 530 regarding its treatment of them. The Tax Court can also decide the amount of employment taxes and/or additions to tax and penalties due if it finds a misclassification of employees. Assessment and collection of the taxes is suspended pending a decision by the Tax Court, and both parties are bound by the court's decision.<sup>12</sup> Under guidance issued by the IRS, there must be an IRS "Notice of Determination" of employment status arising out of an audit to give the court jurisdiction, not merely a finding made in the context of a private letter ruling or Form SS-8 (see page 1-9).

The employer is the only party that can seek review by the Tax Court, not employees or third parties. The "Notice of Determination" sent to the employer by the IRS will advise the employer of the chance for Tax Court review. The Notice is sent after the employer has exhausted the internal IRS appeals process or has decided not to use that process. The employer has 90 days after the Notice is mailed to seek Tax Court review. Otherwise, the employer can pay the assessed tax first and then seek a refund. If the refund claim is denied or the IRS has not responded within 6 months the employer can seek review in federal district court or the Court of Federal Claims.<sup>13</sup>

### **1.3 Employment Status Determined by Law**

The status of some workers is determined by law, specifically the Internal Revenue Code, regardless of what their classification would be under the common law or reasonable basis test. This means that some workers who would be considered independent contractors under one of these tests are nevertheless "statutory employees" for certain purposes. And some workers who would be considered employees under one of these tests are treated as "statutory nonemployees" under the IRC.

#### **1.3-1 Statutory Employees**

Statutory employees are workers who, while they are not employees under the common law, are treated as employees for certain employment tax purposes. Payments made by an employer to statutory employees are not subject to federal income tax withholding, but are subject to withholding for social security and Medicare taxes. Also, the employer must pay the employer's share of social security and Medicare taxes and, in some instances, federal unemployment tax (FUTA).<sup>14</sup> Statutory employees fall into four categories.

---

11. TIGTA 2004-30-055, 3-5-04.  
12. IRC §7436; Chief Counsel Notice CC-2001-044, 10-4-01; *Ewens and Miller, Inc. v. Commissioner*, 117 T.C. No. 22, No. 13069-99 (12-11-01); *Charlotte's Office Boutique, Inc. v. Commissioner*, 425 F.3d 1203 (9 CA, 2005).  
13. IRS Notice 2002-5, 2002-3 IRB 320; IRS Notice 98-43, 1998-2 CB 211.  
14. IRC §3121(d)(3); IRS Reg. §31.3121(d)-1(d).

## **Section 1: The Employer-Employee Relationship**

**Agent-drivers or commission-drivers.**<sup>15</sup> The driver must be engaged in distributing meat, vegetables, fruits, baked goods, beverages (other than milk), or laundry or dry-cleaning services. The driver must also be paid on a commission basis, or the difference between the sales price of the goods or services and the price paid by the driver.

**Full-time life insurance salespersons.**<sup>16</sup> The salesperson's principal business activity must be selling life insurance and/or annuity contracts, primarily for one life insurance company. Generally, the salesperson will use office space made available by the company and will not have to pay for the use of stenographic assistance, telephones, forms, rate books, or advertising materials.



**WATCH OUT** Employers are exempt from paying FUTA tax on the earnings of a full-time life insurance salesperson only if all the earnings are from commissions.<sup>17</sup> If any part of the earnings consist of salary payments, all the earnings are subject to FUTA tax.

**Homeworkers.**<sup>18</sup> The homeworker must work away from the employer's premises, according to specifications provided by the employer, and with goods or materials provided by the employer that must be returned to the employer or someone designated by the employer. Also, the homeworker must be paid at least \$100 in cash wages during the year before the wages become subject to social security and Medicare taxes. The earnings of a homeworker who is not an employee under the common law test are not subject to FUTA tax. Homeworkers are not to be confused with domestic employees who perform household duties in the employer's home. They are governed by a totally different set of rules.

**Traveling or city salespersons.**<sup>19</sup> The salesperson's principal business activity must be working full-time for the employer soliciting orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or similar establishments who either resell or use the merchandise in their own businesses. If the salesperson occasionally solicits orders on behalf of another company, he or she is still a statutory employee, but only with respect to the primary employer.

**General requirements.**<sup>20</sup> Workers who fall into one of the above categories must also meet some general requirements before qualifying as statutory employees.

1. They must agree with the employer that all services are to be performed personally by the worker.
2. They must not make a substantial investment in business equipment or facilities (other than transportation).
3. Their work must be part of a continuing relationship with the employer, rather than a single transaction.

### **1.3-2 Statutory Nonemployees**

Certain categories of workers, while they may qualify as employees under the common law test, are nevertheless treated under the IRC as independent contractors for federal income tax withholding and social security, Medicare, and FUTA tax purposes. They are known as statutory nonemployees. The earnings of statutory nonemployees are not subject to federal income tax withholding or social security, Medicare, or FUTA taxes regardless of their status under the common law test, so long as certain conditions are met.<sup>21</sup> There are two categories of statutory nonemployees.

- 
15. IRC §3121(d)(3)(A); §3306(i); IRS Reg. §31.3121(d)-1(d)(3)(i).
  16. IRC §3121(d)(3)(B); §3306(i); IRS Reg. §31.3121(d)-1(d)(3)(ii).
  17. IRC §3306(c)(14); §3306(i); IRS Reg. §31.3306(c)(14)-1.
  18. IRC §3121(d)(3)(C); §3306(i); IRS Reg. §31.3121(d)-1(d)(3)(iii).
  19. IRC §3121(d)(3)(D); §3306(i); IRS Reg. §31.3121(d)-1(d)(3)(iv).
  20. IRC §3121(d); IRS Reg. §31.3121(d)-1(d)(4).
  21. IRC §3508; IRS Prop. Reg. §31.3508-1.

## *The Payroll Source*

**Qualified real estate agents.** This exemption applies to salespersons who are licensed real estate agents performing services in connection with the sale of real property, including advertising or showing the property, making appraisals, and recruiting, training, or supervising other real estate sales agents.

**Direct sellers.** This exemption applies to individuals who sell consumer products on a buy-sell or deposit-commission basis to be resold in the home or someplace other than a permanent retail establishment. It also applies to individuals who sell the products themselves in the home or someplace other than a permanent retail establishment. The exemption also applies to workers engaged in delivering or distributing newspapers or shopping news (including any directly related services).

**General requirements.** Real estate agents or direct sellers who meet these criteria must also meet two general requirements before their earnings are considered exempt from payroll tax laws.

1. Most of their compensation must be directly related to sales or other work output rather than the number of hours worked.
2. Their work must be performed under a written contract providing that the individual will not be treated as an employee for federal income, social security, Medicare, or FUTA tax purposes.

### **1.4 Temporary Help Agency Employees**

To meet short-term staffing needs, many employers make use of workers hired through temporary help agencies rather than hiring the workers themselves. The temporary workers are hired, screened, and trained by the temporary help agency to provide services for client firms. They are employees of the temporary help agency, which has the sole right to hire and fire them. The agency is responsible for complying with any payroll, benefits, and human resources requirements.

The client company's only obligation is to pay the agency a fee for the temporary workers' services as required by its contract with the agency. Although it may have the contractual right to refuse any worker sent by the agency or to request certain workers who may have done a good job in the past, these rights do not make the workers employees of the client company.

**Example:** Sara, the president of TaxPrepCo, needs extra data processors to handle electronic filing of tax returns in March and April. She contracts with Short-Temps, Inc., which has supplied her with such workers in the past, and asks for several workers who performed well previously. Short-Temps has trained the workers and provides them to several tax preparation services as needed, reviewing their performance with some input from the client firms. The data processors are employees of Short-Temps.



**WATCH OUT** Employers should make sure they are dealing with a financially secure and reputable temporary help agency before entering into a contract, since the agency's financial failure could lead to the client company becoming liable for any withholding or employment taxes that remain unpaid.

### **1.5 Leased Employees**

Another avenue for employers to pursue when looking to lower their expenses for payroll and benefits is that of leasing employees from an employee leasing company. Under a leasing arrangement, the leasing company hires, trains, and qualifies workers for a client company, which pays a fee to the leasing company to cover the cost of payroll, benefits, etc. Although the client company may have the right to hire and fire the workers, set wage levels, and supervise their work, the workers generally are employees of the leasing company, which is responsible for all withholding and employment taxes as well as the administration and funding of any benefits it wishes to provide.

## Section 1: The Employer-Employee Relationship



**WATCH OUT** The leasing company's treatment as the employer of the leased employees stems from its control over the payment of the employees' wages and benefits.<sup>22</sup> The more control the client company retains, the greater the likelihood that it may be considered the employer rather than the leasing company.

In a legal memorandum from its Chief Counsel, IRS said that in order for IRS to establish that a client company is liable for unpaid employment taxes due on wages paid to employees it leased from a leasing company or a professional employer organization, the Service would have to show that the client company was either the common law employer, co-employer with the leasing company, or statutory employer controlling the payment of wages.<sup>23</sup> This determination would have to be made based on the facts and circumstances in each case, including the language of the agreement between the client company and the leasing company or PEO. But be careful, because even though IRS's position is that a PEO is not in control of the payment of wages unless the PEO first receives funds from the client, the agreement between the client and the PEO will determine whether funds have to be provided to the PEO before employees are paid.

**Wage bases restart with leasing agreement.** In 2000, the IRS Chief Counsel ruled that where a leasing company provides employees to a client company, and those same employees worked as employees of the client company earlier in the same calendar year before the leasing agreement was signed, the leasing company must apply separate social security and federal unemployment tax (FUTA) wage bases to the wages it pays to those employees. It cannot take into account the wages paid to the employees by the client company earlier in the year.<sup>24</sup>

**Employment status issues lead to benefit plan relief from IRS.** Because of the difficulties that often are encountered when determining whether "worksites employees" are employees of the client organization (CO) or the leasing company, the IRS issued guidance describing steps that may be taken to ensure the qualified status of defined contribution retirement plans maintained by leasing companies, and professional employer organizations (PEOs).<sup>25</sup>

*Exclusive benefit rule noncompliance could cause plan disqualification.* If the CO, not the PEO, is the employer of the worksite employees under the common law test, a plan maintained by the PEO that benefits worksite employees of the CO will not satisfy the "exclusive benefit rule." Under this rule, a qualified pension, profit-sharing, or stock bonus plan must be established and maintained by an employer for the exclusive benefit of the employer's employees and their beneficiaries (see Section 4-6.1). A retirement plan that provides benefits for individuals who are not employees of the employer maintaining the plan violates the exclusive benefit rule. Therefore, if the CO, not the PEO, is the employer, a plan maintained by the PEO that benefits worksite employees of the CO will not satisfy the exclusive benefit rule.

*Relief from plan disqualification.* Under Revenue Procedure 2002-21, if a PEO has a "PEO retirement plan" in existence on May 13, 2002 that benefits worksite employees, the PEO has the option of either converting its plan to a multiple employer plan or terminating it. If the PEO timely satisfies the requirements, the IRS will not disqualify the pre-existing retirement plan solely on the grounds that it violates or has violated the exclusive benefit rule for plan years beginning before the "compliance date" (the last date of the first plan year of the PEO retirement plan beginning on or after January 1, 2003).

*Termination option.* If a PEO chooses this option, it must take binding action (e.g., board of directors resolution, partnership vote) on or before the "PEO decision date" (120 days after the first day of the plan year beginning on or after January 1, 2003), providing that the plan will be terminated on or before the compliance date. Also before the PEO decision date, the PEO must notify each CO that has worksite employees with accrued benefits in the PEO's retirement plan that the CO has the option of either transferring assets and liabilities attributable to those employees to its own retirement plan (by the compliance date) or of spinning off those assets and liabilities to a separate plan and terminating it (by the compliance date). The CO

---

22. IRC §3401(d)(1); IRS Reg. §31.3401(d)-1(f); *General Motors Corp. v. U.S.*, No. 89-CV-73046-DT (ED Mich. 12-20-90), 67 AFTR2d 520.

23. ILM 200415008, 4-9-04.

24. ILM 200017041, 3-3-00.

25. Rev. Proc. 2002-21, 2002-19 IRB 911; Rev. Proc. 2003-86, 2003-50 IRB 1211.

## *The Payroll Source*

must provide notice of the selected option by a date specified by the PEO. If it does not, the PEO must treat the CO as having chosen the spinoff and termination option. In any event, the PEO must implement the choice made or deemed made by each CO on or before the compliance date.

*Conversion option.* If a PEO chooses this option, it must adopt plan amendments necessary to convert its plan to a “multiple employer retirement plan” on or before the PEO decision date. The effective date of the plan amendments must be no later than the first day of the first plan year beginning after the compliance date. Also before the PEO decision date, the PEO must notify each CO that has worksite employees with accrued benefits in the PEO’s retirement plan that the CO has the option of adopting the multiple employer retirement plan by the effective date of the plan conversion, as well as the options available under the termination option (described above). If the CO does not provide notice of the selected option by the date specified by the PEO, the PEO must treat the CO as having chosen the spinoff and termination option (as above).

**Small companies reap most of the benefits.** Employee leasing has been especially attractive to smaller employers—those with fewer than 100 workers. They often cannot obtain low group health insurance rates, while a leasing company with a larger work force may be eligible for lower rates. Also, smaller companies often find it too costly to staff their own payroll, compensation, or benefits departments or to hire a payroll service bureau, while a larger leasing company faces fewer such obstacles.

Larger businesses may also take advantage of employee leasing, especially when setting up new facilities in new locations or when looking to hire a group of workers with specialized skills (e.g., engineers, systems analysts). Whether an employer will benefit from employee leasing depends on whether the fee charged by the leasing company would be less than the cost of the payroll, benefits, and human resources responsibilities attached to those employees.



**WATCH OUT** Employers should make sure that they are dealing with a financially secure and reputable leasing company before entering into a contract, since the leasing company’s financial failure could lead to the client company becoming liable for any withholding or employment taxes that remain unpaid. (But see footnote 22 for a court ruling that where the leasing company was the employer, the client had no employment tax liability when the leasing company went bankrupt).

**States may have different rules.** While in most instances leased employees are treated the same under state income tax withholding and unemployment insurance laws as they are under federal payroll tax laws, some state laws may place more responsibility on the client company depending on how much control it retains. A check of the applicable state law is necessary before negotiating a lease agreement.

## **1.6 Employees Under Other Federal and State Laws**

The Internal Revenue Code is not the only law that requires compliance based on the existence of an employer-employee relationship. Other federal and state laws governing minimum wages and overtime pay, unemployment insurance, and disability insurance have their own definitions of employee status that determine an employer’s responsibilities.

### **1.6-1 Federal Wage-Hour Law**

The federal Fair Labor Standards Act regulates minimum wage rates, overtime pay, child labor, and equal pay for employees covered by the law (see Section 2 for details). The FLSA broadly characterizes an employee as any individual who works for an employer. In interpreting this definition, the federal courts have steered away from a technical or legal approach, choosing instead to look at the “economic facts” in each case. Using such an approach, the courts and the U.S. Department of Labor’s Wage and Hour Division will find an employer-employee relationship where the worker is “economically dependent” on the employer.

## **Section 1: The Employer-Employee Relationship**

Factors the courts and the DOL consider when making an employment status determination include:

- how much control the employer has over how the work is performed;
- whether the worker has the chance to make a profit or risks a loss based on how skillfully the work is performed;
- whether the worker invests in tools or materials required to perform the work or hires helpers;
- whether the work requires a special skill;
- how permanent the working relationship is; and
- whether the work performed is an integral part of the employer's business operation.<sup>26</sup>

### **1.6-2 State Wage-Hour Laws**

Most states have laws similar to the FLSA regulating minimum wage rates, overtime pay, maximum hours, and child labor. An individual who is an employee for FLSA purposes would generally satisfy the test for employment status under state law, although some states exempt FLSA-covered employees from state wage-hour requirements. Employers should check the state laws in those states where they have workers to make sure of their status.

### **1.6-3 State Income Tax Withholding Laws**

In general, states that require withholding of state income tax follow the common law test used by the IRS in determining whether an employer-employee relationship exists (see Section 1.2-1). Therefore, where the employer has the right to control what work will be done and how it will be done, state income tax withholding will most likely be required.

**What about nonresident employees?** Most states that have an income tax apply it to residents and also to nonresidents who are employed in the state. To prevent employees who live in one state and work in another from being subject to double taxation, some states have entered into "reciprocity agreements" that require employers to withhold only for their employees' states of residence. Other states allow residents to claim a state income tax credit for taxes paid to other states or localities. Where employees live in one state and work in two or more states, an allocation of the work may need to be made. Employers should check the income tax withholding requirements of the states where they do business. [For more information on state laws governing the taxation of nonresident employees, see Table 3.1 in *APA's Guide to State Payroll Laws*.]

### **1.6-4 State Unemployment Insurance Laws**

Because the aim of state unemployment insurance laws is to provide benefits for individuals who are out of work through no fault of their own, their definition of the employer-employee relationship is often more inclusive than the definition used under the Internal Revenue Code or the Federal Unemployment Tax Act. While many states use the common law test that determines employee status under FUTA, more than half use what is known as the "ABC test."

Under the ABC test, a worker is an independent contractor only if:

*Absence of control*—the worker is free from control or direction in performing the work both by agreement and in reality;

---

26. Real v. Driscoll Strawberry Associates, Inc., 603 F.2d 748 (9 CA 1979).

## *The Payroll Source*

*Business is unusual and/or away*—the work is performed outside the usual course of the company’s business or away from any of the employer’s facilities; and

*Customarily independent contractor*—the worker is customarily engaged in an independent trade, occupation, or business.

The application of the ABC test makes it tougher for a company to exclude its workers from coverage under state unemployment insurance contribution laws. Some states apply only two of the three conditions. See Table 1.1 for a chart showing state rules on determining employee status for unemployment insurance contribution purposes. [For more information on the determination of employment status under state unemployment insurance laws, see Table 8.1 in *APA’s Guide to State Payroll Laws*.]

Table 1.1

<b>EMPLOYMENT STATUS DETERMINATIONS UNDER STATE UNEMPLOYMENT INSURANCE LAWS</b>			
<b>State</b>	<b>Rule</b>	<b>State</b>	<b>Rule</b>
Alabama	Common Law	Montana	AC
Alaska	ABC	Nebraska	ABC
Arizona	Common Law	Nevada	ABC
Arkansas	ABC	New Hampshire	ABC
California	Common Law	New Jersey	ABC
Colorado	AC	New Mexico	ABC
Connecticut	ABC	New York	Common Law
Delaware	ABC	North Carolina	Common Law
Dist. of Col.	Common Law	North Dakota	Common Law
Florida	Common Law	Ohio	ABC
Georgia	ABC	Oklahoma	AB or AC
Hawaii	ABC	Oregon	ABC
Idaho	AC	Pennsylvania	AC
Illinois	ABC	Puerto Rico	ABC
Indiana	ABC	Rhode Island	ABC
Iowa	Common Law	South Carolina	Common Law
Kansas	ABC	South Dakota	Common Law
Kentucky	Common Law	Tennessee	ABC
Louisiana	ABC	Texas	Common Law
Maine	ABC	Utah	Common Law
Maryland	ABC	Vermont	ABC



## Section 1: The Employer-Employee Relationship

<b>EMPLOYMENT STATUS DETERMINATIONS UNDER STATE UNEMPLOYMENT INSURANCE LAWS</b>			
<b>State</b>	<b>Rule</b>	<b>State</b>	<b>Rule</b>
Massachusetts	ABC	Virginia	AB or AC
Michigan	Common Law	Washington	ABC
Minnesota	Common Law	West Virginia	ABC
Mississippi	Common Law	Wisconsin	AC
Missouri	Common Law	Wyoming	AC



**MAKE THAT CALL** Employers that are unsure as to whether a worker is an employee or independent contractor for state unemployment insurance purposes can call their state employment security agency for an answer (see Section 7.4 for a directory of state employment security agencies).

### **1.6-5 State Disability Insurance Laws**

In those states that require employer withholding from employees' wages to fund state disability insurance benefit payments (California, Hawaii, New Jersey, New York, Rhode Island, plus Puerto Rico), employment status is determined under the same test the state uses for its unemployment insurance law. (See Section 7.3 for more on these laws).

### **1.7 Worker Misclassification: Enforcement and Penalties**

Employers that misclassify employees as nonemployees or independent contractors face substantial financial penalties as the result of not withholding income tax, failing to withhold and pay employment taxes, and failing to file the correct reports and returns with the IRS, SSA, and state government agencies. The IRS has begun to increase its enforcement efforts concerning misclassification in recent years after realizing billions of dollars in revenue were being lost.

#### **1.7-1 IRS Penalties**

The Internal Revenue Code provides special tax assessments for unintentionally misclassifying an employee as an independent contractor:<sup>27</sup>

- For not withholding federal income tax, the tax assessed is 1.5% of wages paid. This assessment is doubled to 3% if the employer failed to file an information return (Form 1099-MISC, see Appendix page A-261) for the worker with the IRS.
- For not withholding the employee's share of social security and Medicare taxes, the tax assessed is 20% of the employee's share. This assessment is doubled to 40% if the employer failed to file an information return (Form 1099-MISC, see Appendix page A-261) for the worker with the IRS. The employer's share of social security and Medicare taxes must also be paid.

If the employer intentionally misclassifies the worker as an independent contractor even after determining an employer-employee relationship exists (e.g., a Form SS-8 indicating employee status), these special assessments do not apply and the employer is liable for the full amount of federal income tax that should have been withheld and 100% of the employee's and employer's share of social security and Medicare

---

27. IRC §3509(a); §3509(b); IRS Prop. Reg. §31.3509-1(a) - (c).

## *The Payroll Source*

taxes.<sup>28</sup> Remember that the employer is also subject to all other penalties that can be assessed for failing to file returns or pay taxes (see Sections 6 and 8).



**STATE PENALTIES TOO!** The failure to withhold and pay over state income taxes because of worker misclassification will result in back tax assessments and penalties at the state level.

### **1.7-2 IRS Enforcement Efforts**

The IRS uses several different programs in trying to detect worker misclassifications. The 1099 Matching Program targets those individuals who file only one Form 1099-MISC with their personal tax return. A person receiving payments from only one company may well be an employee rather than an independent contractor.

The IRS also will try to spot employees who receive Forms W-2 and 1099-MISC from the same employer in one year. This situation often occurs when a business brings back retired employees as independent contractors (e.g., consultants). While a worker can lawfully be an employee and an independent contractor for the same business entity in the same year (e.g., a production employee who runs a lawn-care company on the weekends and has his employer as a client), an IRS tax examiner will closely examine the facts in such situations if they are uncovered during an employment tax audit. The IRS also uses its regular audit routine to detect improper employment status designations, but too few employment tax returns are examined to make this a valuable enforcement tool. Under its Employment Tax Examination (ETE) Program, the IRS assigns revenue examiners to concentrate on employers suspected of worker misclassification, often based on leads from other federal and state government agencies.

In 1995 the IRS came under increasing criticism, especially from small business owners, regarding its allegedly inconsistent and sometimes “overzealous” enforcement of worker classification requirements. In response, the Service acted on several fronts. The IRS issued a training manual in 1996 for its examiners to guide them in making worker classification determinations, in which it emphasized that hiring workers as independent contractors is a legitimate choice for businesses.

At about the same time, the Service announced the release of its Worker Classification Settlement Program, which allows examiners and businesses to resolve worker classification cases as early in the enforcement process as possible. Under the CSP, the examiner must first determine whether the business is entitled to Section 530 relief. If so, there is no assessment and the business can continue to treat the workers in question as independent contractors. If the business wishes to begin treating the workers as employees, it can agree to do so in the future (no later than the beginning of the next year) without giving up its claim to Section 530 relief for earlier periods.

If the examiner finds that the business is wrongfully treating employees as independent contractors, one of two graduated CSP settlement offers can be made. If the business has met the reporting consistency requirement of Section 530 but clearly has no reasonable basis for its treatment of the workers as independent contractors or has been inconsistent in its treatment of the workers, the offer will be a full employment tax assessment under §3509. If the business has met the reporting consistency requirement and can reasonably argue that it met the reasonable basis and consistency of treatment tests, the offer will be an assessment of 25% of the employment tax liability for the audit year under §3509. Under each offer, the business must agree to treat the workers as employees in the future.

When an employer does not agree with the CSP terms, it may request an early referral of its case to IRS's Office of Appeals. If an agreement still cannot be reached, the case will be returned to the District Office, where the worker classification and §530 issues will be handled separately from other issues in the case.<sup>29</sup> (See Section 1.2-2 for information on Tax Court proceedings involving employment tax and worker classification issues.)

**IRS shares information with state agencies.** In November 2007, 29 state workforce (unemployment) agencies signed a memorandum of understanding (MOU) with the Internal Revenue Service to share the

---

28. IRC §3509(c); IRS Reg. §31.3509-1(d)(4).

29. Rev. Proc. 99-28, 1999-29 IRB 109.

## **Section 1: The Employer-Employee Relationship**

results of employment tax examinations in an effort to increase employer compliance with federal and state employment tax requirements. The agreements are the first result of the Questionable Employment Tax Practice (QETP) initiative.<sup>30</sup>

The QETP initiative is a collaborative, nationwide program seeking to identify employment tax schemes and illegal practices and increase voluntary compliance with employment tax rules and regulations. The IRS, U.S. Department of Labor, National Association of State Workforce Agencies, Federation of Tax Administrators, and state workforce agencies of California, Michigan, New Jersey, New York, and North Carolina worked together to develop the QETP initiative and endorse the MOU as a tool to help increase employment tax compliance at the federal and state levels.

*Participating states.* The following 29 states have signed agreements with the IRS: Arizona, Arkansas, California, Colorado, Connecticut, Hawaii, Idaho, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin.

*What will happen?* Under the MOU, the following actions will take place:

- The IRS and participating state workforce agencies will exchange employment tax information for civil cases, which primarily involve attempts to evade or inappropriately reduce employment tax liabilities.
- The IRS and the states may exchange information using either actual employment tax reports or a template compatible with federal and state information that the QETP oversight team has developed.
- The IRS and the states may participate in coordinated enforcement efforts. The MOU will allow the IRS and the state workforce agencies to share independently conducted examination results or work side-by-side on an examination.
- The IRS and the states will strive to be consistent with their examination results, reducing the chances that states might classify a worker as an employee while the IRS classifies the worker as an independent contractor, or vice versa.
- The IRS and the states will share employment tax training opportunities and materials.
- The IRS and the states will share outreach opportunities with the business community whenever practical.

**Reclassification can mean retroactive benefits as well.** Payment of back employment taxes is not the only thing that employers who misclassify employees as independent contractors have to worry about. In 1996, a federal appeals court held that Microsoft Corporation, which had agreed to reclassify “freelancers” as employees after an IRS employment tax audit, also had to include the misclassified workers in its §401(k) plan and §423 employee stock purchase plan.<sup>31</sup> Upon rehearing the case (in part because of a brief submitted by the APA), the court reaffirmed its earlier decision regarding the employee stock purchase plan, but it said the §401(k) plan administrator had to make the initial determination as to whether the reclassified employees were entitled to participate in that plan.<sup>32</sup>

In 1999, the court ruled that the class of employees eligible to participate in the employee stock purchase plan could not be limited to workers hired before the initial reclassification, but had to include workers hired later as temporary employees who were converted into the reclassified positions.<sup>33</sup>

---

30. IR-2007-184, 11-6-07.

31. Vizcaino v. Microsoft Corporation, 97 F.3d 1187 (3 CA 1996).

32. Vizcaino v. Microsoft Corporation, 120 F.3d 1006 (9 CA, 1997); cert. denied, 118 S.Ct. 899 (1999).

33. Vizcaino v. Microsoft Corporation, 173 F.3d 713 (9 CA, 1999); reh. den. 184 F.3d 1070 (9 CA, 1999).

## *The Payroll Source*

But all may not be lost for employers that fear the costly consequences of a reclassification, and, as usual, thoughtful planning beforehand is the key. In a legal memorandum issued to one of its field offices after the *Vizcaino* decision, the IRS said that employers can write their retirement plan eligibility rules:

- to cover only employees who are common law employees in the employer's payroll records; and
- to exclude other individuals even if a court or administrative agency later determines that such individuals are common law employees and not independent contractors.<sup>34</sup>

A federal district court in New York deferred to the determination of an administrative committee for an employer's benefit plans that sales representatives were not eligible for benefits, despite rejecting the employer's claim that the individuals were independent contractors rather than employees. The committee had denied the sales representatives' claims for benefits because they were paid through accounts payable and the plan limited eligibility to employees paid on the "regular payroll" and required employee contributions through payroll deductions. The court said the committee's determination was reasonable because it was consistent with the plans' contribution language.<sup>35</sup>

### **1.7-3 FLSA Complaints Filed With the Department of Labor**

Workers who feel they are being improperly treated as independent contractors and are not being paid the minimum wages or overtime pay they are entitled to may file a complaint with the U.S. Department of Labor's Wage and Hour Division. More than 75% of the audits conducted by Division investigators are the result of individual complaints. And each complaint can result in a full-blown audit of the employer's classification practices.

Huge backpay and damage awards can result because the misclassified worker's recollection will support a claim of overtime hours worked if the employer has no documented record of hours worked. The DOL may also file suit for the equivalent of two years' wages owed (three if the misclassification was willful) and damages on behalf of other workers who were misclassified. FLSA violations carry substantial civil fines as well (see Section 2.9).

### **1.7-4 State Unemployment Agencies**

Many employers' misclassification problems begin when someone who has been treated as an independent contractor stops receiving work and files a claim for unemployment benefits. When the person is denied benefits because there were no eligible earnings, the claimant's charge that he or she was actually an employee will often lead to a full-scale investigation of the employer's employment status determinations.

A finding of misclassification can lead to the assessment of penalties for both failure to report wages and to pay unemployment insurance contributions. It can also mean a reduction in the credit the employer receives against federal unemployment taxes owed for state taxes paid in full and on time.

## **1.8 Proof of the Right to Work in the U.S.**

Once an employer hires a worker as an employee, the employee must prove his or her identity and right to work in the United States. The Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for an employer to knowingly hire or continue to employ an unauthorized worker.<sup>36</sup> Employers must comply with this requirement by verifying the identity and right to work of all employees hired after November 6, 1986.

---

34. TAM, 7-28-99; Tax Analysts Doc. 2000-14434.

35. Administrative Committee of the Time Warner, Inc. Benefits Plans v. Biscardi, No. 99 CIV 12270, 2000 U.S. Dist. LEXIS 16707 (SD N.Y., 11-17-00).

36. P.L. 99-603, as amended by P.L. 100-525; P.L. 101-649; P.L. 104-208; 8 U.S.C. §1324a; IRCA Regs. 8 CFR Part 274a; 28 CFR Part 44.

## **Section 1: The Employer-Employee Relationship**

**Employers can protect themselves.** Employers will not be penalized under IRCA if they have acted in good faith, even though they may have employed an unauthorized worker after accepting a fraudulent document offered as proof of the right to work. Employers can protect themselves by:

- having employees fill out Section 1 of Form I-9, *Employment Eligibility Verification* (see Appendix page A-34), on their first day of work;
- making sure employees provide original documentary evidence of their identity and eligibility to work within 3 business days of the date of hire;
- making sure the documents establishing the employee's identity and eligibility to work appear genuine within 3 business days of the date of hire;
- properly completing the employer's portion of Form I-9 (Section 2) within 3 business days of the date of hire;
- keeping completed I-9 forms for at least 3 years from the date of hire or 1 year from the date of termination, whichever is longer; and
- presenting Form I-9 on request to an inspector from U.S. Citizenship and Immigration Services or the Department of Labor.

**INS becomes USCIS.** On March 1, 2003, the employment eligibility-related functions of the Immigration and Naturalization Service (INS) transitioned to the Bureau of Citizenship and Immigration Services (BCIS), an agency that is part of the Department of Homeland Security. On August 23, 2004, BCIS became United States Citizenship and Immigration Services. Employers deal with USCIS on employment eligibility issues in the same way they dealt with INS. The Internet website for USCIS is [www.uscis.gov](http://www.uscis.gov).<sup>37</sup>

**Documents prove identity and/or work authorization.** All newly hired employees must show evidence of their identity and right to work in the U.S. They can do this by presenting any of a number of documents listed on Form I-9 (one from List A or one each from List B and List C):<sup>38</sup>

*List A—Documents proving both identity and work authorization*

1. U.S. passport (expired or unexpired);
2. Permanent Resident Card or Alien Registration Receipt Card (green card)—USCIS Form I-551, that contains a photograph, fingerprint, and signature of the bearer (the name was changed from Alien Registration Receipt Card to Permanent Resident Card by regulation in 1998);



**WATCH OUT** Old green cards (Form I-151) are no longer valid proof of immigrant status, identity, and employment eligibility. Lawful permanent resident aliens should have Form I-551, which has the bearer's photograph, signature, and fingerprint.

3. Unexpired foreign passport with a temporary I-551 stamp reading "processed for I-551. Temporary Evidence of Lawful Admission for permanent residence. Valid until \_\_\_\_ Employment Authorized";
4. Unexpired Employment Authorization Document that contains a photograph, USCIS Form I-766, I-688, I-688A, I-688B;
5. An unexpired foreign passport with an unexpired Arrival-Departure Record, Form I-94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, if that status authorizes the alien to work for the employer.

---

37. 69 FR 60938, 10-13-04.

38. IRCA Reg. 8 CFR §274a.2; Form I-9.

## *The Payroll Source*



**EAD UPGRADED** In 2004, USCIS issued a new version of the Employment Authorization Document (EAD), Form I-766. The new EAD has more security features to prevent counterfeiting and fraud, including a magnetic strip, a two-dimensional barcode, and several features that can be used in forensic examination to determine its authenticity.

### *List B—Documents Proving Identity Only*

1. Driver's license or ID card issued by a state or U.S. possession with a photograph or identifying information including name, date of birth, sex, height, color of eyes, and address;
2. ID card issued by federal, state, or local government agency or entity with a photograph or identifying information in No. 1.
3. School ID card with a photograph;
4. Voter's registration card;
5. U.S. Military card or draft record;
6. Military dependent's ID card;
7. U.S. Coast Guard Merchant Mariner Card;
8. Native American tribal document;
9. Canadian driver's license;
10. For persons under age 18:
  - a. school record or report card;
  - b. clinic, doctor, or hospital record;
  - c. day care or nursery school record.

### *List C—Documents Proving Work Authorization Only*

1. U.S. social security card issued by SSA, if it does not say the card is not valid for employment;
2. Certification of Birth Abroad issued by the Department of State, Form FS-545 or Form DS-1350;
3. Original or certified copy of a birth certificate with an official seal issued by a state or local government agency or a U.S. possession;
4. Native American tribal document;
5. U.S. Citizen ID Card, Form I-197;
6. ID Card for Use of Resident Citizen in the U.S., Form I-179;
7. Unexpired employment authorization document issued by DHS (other than those in List A).



**BE CAREFUL** Specific documents cannot be demanded by the employer (e.g., social security card, driver's license, passport). An employee can provide any document(s) on the lists to prove identity and work authorization.

## **Section 1: The Employer-Employee Relationship**

**Documentation changes still pending.** The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 reduced the number of documents that USCIS must accept as proof of eligibility to work in the U.S., and set September 30, 1997 as the deadline for regulations implementing those changes to be issued. On that day, an interim rule removed documents 2, 3, 8 and 9 from List A and narrowed the instances when document 4 would be acceptable.<sup>39</sup>

Within a week, Public Law 105-54 was enacted extending the deadline for issuing regulations to March 30, 1998. On February 2, 1998, proposed regulations were issued that would implement a significant reduction in the types of documents that employees could offer to prove their identity and work authorization, as well as make other changes.<sup>40</sup> Those proposed rules have not yet been finalized.

**Revised Form I-9 issued in 2007.** In November 2007, USCIS released an updated version of Form I-9, as well as a revised *Handbook for Employers* (Publication M-274) containing instructions for completing Form I-9. USCIS revised Form I-9 to bring it into compliance with the 1997 interim rule.

**Previous forms no longer valid.** Employers must use the new Form I-9, which has a date of June 5, 2007, beginning on December 27, 2007.<sup>41</sup>

**Completing the Form I-9.** Ensure that the employee fully completes Section 1 of Form I-9 at the time of hire – when the employee begins work. Review the employee’s document(s) and fully complete Section 2 of the Form I-9 within 3 business days of hire. If a person is hired for less than 3 business days, Sections 1 and 2 of the Form I-9 must be fully completed at the time of hire – when the employee begins work.

Form I-9 DOES NOT need to be completed for persons who are:

- hired before November 7, 1986, who are continuing in their employment and have a reasonable expectation of employment at all times;
- employed for casual domestic work in a private home on a sporadic, irregular, or intermittent basis;
- independent contractors; or
- providing labor to you who are employed by a contractor providing contract services (e.g., employee leasing or temporary agencies).

*Section 1.* Have the employee complete Section 1 at the time of hire (when he or she begins to work) by filling in the correct information and signing and dating the form. Ensure that the employee prints the information clearly. If the employee cannot complete Section 1 without assistance or if he or she needs the Form I-9 translated, someone may assist him or her. The preparer or translator must read the form to the employee, assist him or her in completing Section 1, and have the employee sign or mark the form in the appropriate place. The preparer or translator must then complete the Preparer/Translator Certification block on the form.



**BE CAREFUL** Providing a social security number on Form I-9 is voluntary for all employees unless the employer is participating in USCIS’s E-Verify Program (see page 1-30), which requires an employee’s social security number for employment eligibility verification. Employers may not, however, ask an employee to provide specific documents with the employee’s social security number on it.

*Section 2.* The employee must present an original document or documents that establish identity and employment eligibility within 3 business days of the date employment begins. Some documents establish both identity and employment eligibility (List A). Other documents establish identity only (List B) or employment authorization only (List C). The employee can choose which document(s) he or she wants to present from the Lists of Acceptable Documents.

---

39. 62 F.R. 51001, 9-30-97.

40. 63 F.R. 5287, 2-2-98

41. 72 FR 65974, 11-26-07.

## *The Payroll Source*

Examine the original document or documents the employee presents and then fully complete Section 2 of Form I-9. Employers must examine one document from List A, or one from List B and one from List C. Record the title, issuing authority, number, and expiration date (if any) of the document(s); fill in the date of hire and correct information in the certification block; and sign and date the Form I-9. Employers must accept any document from the Lists of Acceptable Documents presented by the individual which reasonably appear on their face to be genuine and to relate to the person presenting them. Employers may not specify which document an employee must present.



**WATCH OUT** An employer participating in the E-Verify Program may only accept List B documents that have a photograph.

In certain circumstances, employers must accept a receipt in lieu of a listed document if one is presented by an employee.<sup>42</sup> A receipt indicating that an individual has applied for initial work authorization or for an extension of expiring work authorization is not acceptable proof of employment eligibility on Form I-9. Receipts are never acceptable if employment lasts less than 3 business days.

Receipts and other documents that serve as proof of temporary employment eligibility that employers can accept are:

1. Receipts for the application of a replacement document where the document was lost, stolen, or destroyed. The employee must present the replacement document within 90 days from the date of hire.
2. The arrival portion of a Form I-94 with an attached photo and a temporary I-551 stamp, which is a receipt for a List A document. When the stamp expires, or if the stamp has no expiration, one year from date of issue, the employee must present the Form I-551 Permanent Resident Card.
3. The departure portion of the Form I-94 with a refugee admission stamp, which is a receipt for a List A document. The employee must present, within 90 days from date of hire, Form I-766, or a List B document and an unrestricted social security card.

When the employee provides an acceptable receipt, the employer should record the document title in Section 2 of the Form I-9 and write the word “receipt” and any document number in the “Document #” space. When the employee presents the actual document, the employer should cross out the word “receipt” and any accompanying document number, insert the number from the actual document presented, and initial and date the change.

**Minors (individuals under age 18).** If a person under the age of 18 cannot present a List A document or an identity document from List B, Form I-9 should be completed in the following way:

- a parent or legal guardian must complete Section 1 and write “Individual under age 18” in the space for the employee’s signature;
- the parent or legal guardian must complete the “Preparer/Translator Certification” block;
- the employer should write “Individual under age 18” in Section 2, List B, in the space after the words “Document #”; and
- the minor must present a List C document showing his or her employment eligibility. The employer should record the required information in the appropriate space in Section 2.

**Employees with disabilities (special placement).** If a person with a disability, who is placed in a job by a nonprofit organization or as part of a rehabilitation program, cannot present a List A document or an identity document from List B, Form I-9 should be completed in the following way:

- A representative of the nonprofit organization, a parent or a legal guardian must complete Section 1 and write “Special Placement” in the space for the employee’s signature;

---

42. IRCA Reg. 8 CFR §274a.2b(1)(vi)(B), (C).



## **Section 1: The Employer-Employee Relationship**

- The representative, parent or legal guardian must complete the “Preparer/Translator Certification” block;
- The employer should write “Special Placement” in Section 2, List B, in the space after the words “Document #”; and
- The employee with a disability must present a List C document showing his or her employment eligibility. The employer should record the required information in the appropriate space in Section 2.

**Future expiration dates.** Future expiration dates may appear on the employment authorization documents of aliens, including, among others, permanent residents and refugees. USCIS includes expiration dates even on documents issued to aliens with permanent work authorization. The existence of a future expiration date:

- does not preclude continuous employment authorization;
- does not mean that subsequent employment authorization will not be granted; and
- should not be considered in determining whether the alien is qualified for a particular position.

**Reverifying employment authorization for current employees.** When an employee’s work authorization expires, the employer must reverify his or her employment eligibility. Use Section 3 of Form I-9, or, if Section 3 has already been used for a previous reverification or update, use a new Form I-9. When using a new form, write the employee’s name in Section 1, complete Section 3, and retain the new form with the original. The employee must present a document that shows either an extension of the employee’s initial employment authorization or new work authorization. If the employee cannot provide the employer with proof of current work authorization (e.g. any document from List A or List C, including an unrestricted social security card), that individual cannot continue to be employed.

**Note:** List B identity documents, such as a driver’s license, should not be reverified when they expire.

To maintain continuous employment eligibility, an employee with temporary work authorization should apply for new work authorization at least 90 days before the current expiration date. If USCIS fails to adjudicate the application for employment authorization within 90 days, then the employee will be authorized for employment on Form I-766 for a period not to exceed 240 days.

**Reverifying or updating employment authorization for rehired employees.** When rehiring an employee, the employer must ensure that he or she is still authorized to work. Employers may do this by completing a new Form I-9 or by reverifying or updating the original form by completing Section 3. When rehiring an employee who has previously completed a Form I-9, the employer may *reverify* on the employee’s original Form I-9 (or on a new Form I-9 if Section 3 of the original has already been used) if:

- rehiring the employee within three years of the initial date of hire; and
- the employee’s previous grant of work authorization has expired, but he or she is currently eligible to work on a different basis or under a new grant of work authorization than when the original Form I-9 was completed.

To reverify, the employer must:

- record the date of rehire;
- record the document title, number and expiration date (if any) of any document presented;
- sign and date Section 3; and
- when reverifying on a new Form I-9, write the employee’s name in Section 1.

When rehiring an employee who has previously completed a Form I-9, the employer may *update* on the employee’s original Form I-9 or on a new Form I-9 if:

- the employer rehired the employee within three years of the initial date of hire; and
- the employee is still eligible to work on the same basis as when the original Form I-9 was completed.

## *The Payroll Source*

To update, the employer must:

- record the date of rehire;
- sign and date Section 3; and
- when updating on a new Form I-9, write the employee's name in Section 1.

Employers always have the option of completing Sections 1 and 2 of a new Form I-9 instead of completing Section 3 when rehiring employees.

**Spanish version.** Form I-9 is available in English and Spanish. However, only employers in Puerto Rico may have employees complete the Spanish version for their records. Employers in Puerto Rico may use either the Spanish or the English version of Form I-9 to verify employees. Employers in the 50 states, the District of Columbia, and other territories may use the Spanish version as a translation guide for Spanish-speaking employees, but must complete the English version and keep it in their records.

**Penalties.**<sup>43</sup> Employers that knowingly hire unauthorized aliens face civil penalties of \$250 - \$2,000 for each worker hired for a first offense, \$2,000 - \$5,000 for a second offense, and \$3,000 - \$10,000 for more than two offenses. Employers that fail to comply with the verification requirements can be fined \$100 - \$1,000 for each person for whom proper verification was not required. Employers that engage in a pattern and practice of violating the hiring and/or verification requirements face criminal penalties of up to \$3,000 and/or six months in jail. Where the verification violation is minor and future compliance is expected, a warning notice explaining the nature of the violation may be issued in lieu of a fine.

Under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, certain minor, unintentional, technical, and procedural violations made during the verification process are not considered compliance failures if the employer makes a good faith attempt to correct them during the 10-day period normally allotted for making corrections after being notified by USCIS. In 1998, proposed rules implementing the good faith exception were issued.<sup>44</sup> The employer must make any corrections to sections 2 or 3 and ensure that the employee, preparer, or translator make any corrections to section 1. All such corrections must be initialed and dated. The rules also outline situations that would not be considered good faith, such as technical or procedural mistakes committed to avoid verification, making knowingly false corrections, preparing a Form I-9 knowing the form contains false information, and corrections made after receiving previous notices of violations.

In 2007, U.S. Immigration and Customs Enforcement (ICE) began using a new strategy for combating unlawful employment of illegal aliens. Because it found that administrative fines did not deter unscrupulous employers that viewed them simply as a cost of doing business, ICE now often pursues more serious criminal charges. For example, a felony conviction for harboring illegal aliens can result in a 10-year prison sentence. ICE has found these criminal sanctions to be a far greater deterrent to illegal employment schemes than administrative sanctions.

**What constitutes 'knowingly' hiring unauthorized aliens?** Under IRCA (8 U.S.C. §1324a(a)(2)), it is unlawful for an employer, after hiring an alien, to continue to employ the alien in the U.S. "knowing" the alien is (or has become) unauthorized with respect to such employment. An employer can violate this section by having either actual or constructive knowledge (i.e., the employer knew or should have known) that an employee is unauthorized to work. In 2007, ICE issued final regulations describing safe harbor procedures for employers that receive a "no-match" letter from the Social Security Administration (SSA) or DHS. Employers that follow these procedures will not be considered to have "constructive knowledge" that an employee is unauthorized to work in the U.S. just because they received a no-match letter.<sup>45</sup>

---

43. IRCA Reg. 8 CFR §274a.9; §274a.10.

44. 63 F.R. 16909, 4-7-98.

45. 72 F.R. 45611, 8-15-07.

## Section 1: The Employer-Employee Relationship



**FEDERAL COURT PUTS REGS ON HOLD** A federal district court in California issued an order stopping ICE's regulations from taking effect as scheduled in September 2007 and barring SSA from mailing out no-match letters to employers for 2006 W-2s because the letters refer to the new regulations and employers' duties under the safe harbor procedures.<sup>46</sup> DHS then asked the court to delay a final decision until it could answer some of the court's concerns and reissue the regulations in March 2008.

Employers annually send the SSA millions of Forms W-2 (*Wage and Tax Statement*) in which the combination of employee name and social security number (SSN) does not match SSA records. In some of these cases, SSA sends a "no-match" letter that informs the employer of this fact (see Section 8.13-1). ICE sends a similar letter after it has inspected an employer's Forms I-9 during an audit and has unsuccessfully attempted to confirm, in agency records, that an immigration status or employment authorization document presented or referenced by the employee in completing the Form I-9 was assigned to that person.

*Constructive knowledge: examples added.*<sup>47</sup> The final regulations amend the definition of "constructive knowledge" by adding examples of information available to an employer indicating that an employee could be an alien not authorized to work in the U.S.:

- Written notice from SSA that the combination of name and SSN submitted for an employee does not match SSA records; and
- Written notice from ICE that the immigration status or employment authorization document presented or referenced by the employee in completing Form I-9 was assigned to another person, or that there is no agency record that the document was assigned to anyone.

*Employer's obligations explicitly stated.* The final regulations explicitly state that if the employer fails to take reasonable steps after receiving such information, and if the employee is in fact an unauthorized alien, then the employer may be found to have constructive knowledge of that fact, although that would depend on the "totality of the circumstances" in the particular case.

*Safe harbor.* The final regulations describe the steps an employer should take after receiving a no-match letter to avoid the risk that ICE might find that the employer had constructive knowledge that the employee was not authorized to work in the U.S.:<sup>48</sup>

**Step 1.** A reasonable employer must check its records promptly (i.e., within 30 days) after receiving a no-match letter, to determine whether the discrepancy results from a typographical, transcribing, or similar clerical error in the employer's records or in its communication to the SSA or ICE. If there is such an error, the employer must correct its records, inform the relevant agencies (in accordance with the letter's instructions, if any; otherwise in any reasonable way), and verify that the name and number, as corrected, match agency records – in other words, verify with the relevant agency that the discrepancy has been resolved – and make a record of the manner, date, and time of verification.

**Step 2.** If such actions do not resolve the discrepancy, the reasonable employer must promptly ask the employee to confirm that the employer's records are correct. If they are not correct, the employer must take the actions needed to correct them, inform the relevant agencies, and verify the corrected records with the relevant agency. If the records are correct according to the employee, the reasonable employer must ask the employee to pursue the matter personally with the relevant agency.

A discrepancy will be considered resolved only if the employer verifies with SSA or DHS, as the case may be, that the employee's name matches an SSN assigned to that name in SSA's records, and the number is valid for work or is valid for work with DHS authorization (and verifies such authorization with DHS) or that DHS records indicate that the immigration status or employment authorization document was assigned to the employee. Employers should make a record of the manner, date, and time of any such verification, as SSA may not provide any written documentation.

---

46. American Federation of Labor v. Chertoff, No. C 07-04472 CRB (ND Cal., 10-10-07).

47. 8 CFR §274a.1(l)(1)(iii)(B), (C).

48. 8 CFR §274a.1(l)(2)(i) – (iii).

## *The Payroll Source*

Step 3. If the discrepancy is not resolved within 90 days of receipt of the no-match letter, the safe harbor procedure requires the employer and employee to complete a new Form I-9 as if the employee were newly hired, with certain restrictions:

- If an employer tried to resolve the discrepancy described in the no-match letter for the full 90 days, the employer and employee have an additional three days to complete a new Form I-9.
- No document containing the SSN or alien number that is the subject of the no-match letter, and no receipt for an application for a replacement of such a document, can be used to establish employment authorization and/or identity.
- No document without a photograph can be used to establish identity (or both identity and employment authorization).



**KEEP BOTH FORMS** If a new Form I-9 is completed, it must be retained by the employer with the employee's prior Form(s) I-9 under the general Form I-9 recordkeeping requirements.<sup>49</sup>

*Employer choices.* If the discrepancy referred to in the no-match letter is not resolved, and if the employee's identity and work authorization cannot be verified, then the employer must choose between terminating the employee or facing the risk that ICE may find that the employer had constructive knowledge that the employee was an unauthorized alien. An employer that follows procedures other than the safe harbor procedures described in the final regulations runs the risk that ICE may not agree and may find that the employer has constructive knowledge of the employee's status as an unauthorized alien.

*Actual knowledge.* The final regulations do not preclude ICE from finding that an employer had actual knowledge that an employee was an unauthorized alien. An employer with actual knowledge cannot avoid liability by following the procedures described in the final regulations.

*Information received outside of no-match letters.* The safe harbor procedures do not extend to information received by employers from sources other than no-match letters. For example, the regulations do not apply to SSA or DHS new hire verifications done through the Social Security Number Verification Service (SSNVS – see Section 6.2-1) or the E-Verify program operated by USCIS (see page 1-30).

**Leasing companies and temporary help agencies.** Employers using leased employees and temporary help agency referrals should make sure the agency assumes the responsibility of the employer under IRCA in the language of the lease agreement or temporary agency contract. Otherwise, the employer may be responsible for complying with IRCA regarding those employees.

**Electronic Forms I-9.** Rules were issued in 1996 allowing employers to generate paper Forms I-9 electronically if the form is legible, there are no changes to the name, content, or sequence of the data elements, no additional data elements or language are inserted, and the paper meets the standards for retention and production for inspection.<sup>50</sup> Employers can also download a fillable electronic Form I-9 from [www.uscis.gov](http://www.uscis.gov). In 2004, the Immigration and Nationality Act was amended to allow employers to accept electronic signatures on Form I-9 and to store the form in an electronic format. This allows employers to implement a system for completing Form I-9 electronically and to save on the space they previously needed to store paper Forms I-9. The amendment was to take effect on April 28, 2005, or earlier if USCIS issued implementing regulations that took effect before that date.<sup>51</sup> On April 29, 2005, implementing regulations were still being developed, so ICE issued interim guidelines for employers that wanted to make use of the electronic completion and/or storage options.

In June 2006, ICE issued an interim rule establishing standards for electronic signatures and the electronic retention of Form I-9.<sup>52</sup>

---

49. 8 CFR §274a.1(l)(2)(iii)(B).

50. IRCA Reg. 8 CFR §274a.2.(a)(2).

51. Pub. Law No. 108-390.

52. 71 F.R. 34510, 6-15-06.

## **Section 1: The Employer-Employee Relationship**

*Electronic recordkeeping standards.* To reduce the burden on employers, ICE has adopted standards that closely follow the widely accepted electronic storage standards and requirements used by the IRS for tax records (see Section 10.2). The standards are technology-neutral and allow businesses the flexibility to keep employment authorization records in the same manner they use for other business records. If an electronic I-9 records system is IRS-compliant, it will also be ICE-compliant.

*Electronic signatures.* If an employer uses an electronic Form I-9, the attestations in the form must be completed using a system for capturing an electronic signature that meets the following standards:<sup>53</sup>

- includes a method to acknowledge that the attestation has been read by the person providing the signature;
- attaches the signature to, or logically associates it with, an electronically completed Form I-9;
- affixes the signature at the time of the transaction;
- creates and preserves a record verifying the identity of the person producing the signature; and
- provides a printed confirmation of the transaction, at the time of the transaction, to the person providing the signature.

Electronic signatures can be accomplished using various technologies including, but not limited to, electronic signature pads, personal identification numbers (PINs), biometrics, and “click to accept” dialog boxes.

*Electronic creation and retention.* An employer’s electronic Form I-9 generation or storage system must include:<sup>54</sup>

- reasonable controls to ensure the integrity, accuracy, and reliability of the electronic generation or storage system;
- reasonable controls to prevent and detect the unauthorized or accidental creation, alteration, deletion, or deterioration of an electronically completed or stored Form I-9;
- an inspection and quality assurance program that produces regular evaluations of the electronic system;
- a retrieval system with an indexing system that permits searches by any data element; and
- the ability to reproduce legible and readable hardcopies.

All documents reproduced by an electronic retention system must show a high degree of legibility and readability when displayed on a video display terminal or when printed on paper, microfilm, or microfiche. This means the reader must be able to identify all letters and numbers individually and as words or complete numbers.<sup>55</sup>

An electronic creation or storage system must not be subject to an agreement restricting the federal government’s access to and use of the system. The system must also remain available as long as it contains records subject to USCIS inspection.<sup>56</sup>

*Records inspections.* At the time of an inspection, the employer must:<sup>57</sup>

- retrieve and reproduce (including printed copies on request) only the Forms I-9 retained electronically, along with specifically requested supporting documentation, plus the associated audit trails showing who accessed the system and what actions they performed on the system during the specified time period;
- provide the inspector with the resources (e.g., hardware and software, personnel, and documentation) needed to locate, retrieve, read, and reproduce the requested records; and
- provide on request any reasonably available or obtainable electronic summary file, such as a spreadsheet, containing the information fields on the electronically stored Forms I-9.

*Documentation.* Upon request by an inspector, employers must make available documentation of the business processes that:<sup>58</sup>

---

53. IRCA Reg. 8 CFR §274a.2(h).  
54. IRCA Reg. 8 CFR §274a.2(e)(1).  
55. IRCA Reg. 8 CFR §274a.2(e)(2).  
56. IRCA Reg. 8 CFR §274a.2(e)(3), (4).  
57. IRCA Reg. 8 CFR §274a.2(e)(8).  
58. IRCA Reg. 8 CFR §274a.2(f).

## *The Payroll Source*

- create, modify, and maintain the stored Forms I-9;
- establish the authenticity of the stored Forms I-9, such as audit trails.

*Security.* Employers that create and store Forms I-9 and supporting documentation electronically must implement an effective records security program that:<sup>59</sup>

- ensures that only authorized personnel have access to the electronically stored records;
- provides for backup and recovery of records;
- ensures that employees are trained to minimize the risk of unauthorized or accidental changes or deletions of electronically stored records;
- ensures that whenever the electronic record is touched, a secure and permanent record is created that establishes the date of access, the identity of the person who accessed the records, and the action taken by that person.

*Paper vs. electronic I-9 process.* An employer in compliance with current recordkeeping and retention requirements is not required to take any additional or different action to comply with the interim rule, which merely offers an additional option. The interim rule does not require any employer to use an electronic recordkeeping system. Nor does it make any change in the current paper Form I-9 process.

An employer can use a combination of paper and electronic methods to fulfill its obligations. For example, an employer can complete a paper Form I-9 and then scan it to retain the form electronically. Employers that copy documents provided by employees to prove their identity and work authorization must retain those copies with the Forms I-9; under the interim rule, the copies can be retained as electronic images rather than on paper.

*Effective date.* The interim rule was effective on June 15, 2006, the date it was published. Because the effective date of the underlying statute authorizing electronic retention of Form I-9 was April 28, 2005, forms created between that date and June 15, 2006, do not have to comply with the interim rule.

**Employment verification pilot programs.** The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 contained three verification pilot programs.

Each pilot used an automated confirmation system through which employers match information provided by new employees on Form I-9 against existing information contained in the Social Security Administration's or USCIS's database to confirm the employee's employment eligibility. The pilots were conducted in select states and originally, each was scheduled to last up to four years. The three pilots were the Basic Pilot, the Citizen Attestation Pilot, and the Machine Readable Document Pilot. In mid-2003, the Citizen Attestation Pilot and the Machine Readable Document Pilot expired and were not renewed. In December 2003, the Basic Pilot Program Extension and Expansion Act extended the Basic Pilot for 5 more years (through November 2008) and broadened its reach to all the states by December 1, 2004.<sup>60</sup> In 2007, the Basic Pilot Program became the E-Verify Program.

**General rules.** Employers may request that E-Verify apply to all their hiring in each state where the program will take place, or that it be limited to hiring in one or more states, or to one or more places of hiring within a state.

**E-Verify Program.** The E-Verify Program involves verification checks of the SSA and DHS databases, using an automated system to verify the employment authorization of all newly hired employees. Participation in E-Verify is voluntary, and it is free to participating employers other than some federal entities and previous serious violators of the IRCA requirements. The program falls under the jurisdiction of USCIS's Systematic Alien Verification for Entitlements (SAVE) Program.

E-Verify is available on the Internet using a Web-based access method. This allows employers to use the system from any personal computer with access to the Internet. Once an employer has registered and com-

---

59. IRCA Reg. 8 CFR §274a.2(g).

60. Basic Pilot Program Extension and Expansion Act of 2003, P.L. 108-156; 69 F.R. 75997, 12-20-04.

## **Section 1: The Employer-Employee Relationship**

pleted the Web-based tutorial, it can immediately begin using the Web-based access method of the program. To register, go to [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify) and follow the instructions. Following are some enhancements that E-Verify offers:

*Participants register on the Internet.* Persons interested in using E-Verify need to register on the Internet and sign a Memorandum of Understanding (MOU) with the SAVE Program and the SSA. This gives the user access to the automated Verification Information System (VIS), which checks the SSA and USCIS databases to verify employment authorization. Instructions are provided for completing, signing, and submitting the MOU to the SAVE Program. Individuals will receive confirmation of his or her company's participation in E-Verify via e-mail, and, at the same time, will be provided with a user ID and temporary password.

*Internet training.* E-Verify is extremely user-friendly and has mouse-over text helpers to provide hints while entering your queries, e.g., entering complex surnames. New users must complete the Web-based tutorial (WBT). Once the WBT is completed, the system is immediately available for performing verification queries.

*New user types.* Three user types have been created for E-Verify. You determine your user type after registering. Depending on the user type you select, you will be able to perform different functions, e.g., perform queries, manage your account, and view reports. You will only be able to access information relating to your company site. Following is a description of each user type:

- Program Administrator – The Program Administrator is to be located at each of your company's sites. This user is responsible for: creating and managing user accounts at its site for the Corporate Administrator and the General User; unlocking user accounts; updating site information; and viewing reports. Since the Program Administrator may be the only person at your site using the system, he or she also may have the capability to perform queries. The person registering your company is automatically defaulted as a Program Administrator.
- General User – A general user can perform verification queries, view user reports, and update his or her personal user profile information, e.g., name change, new phone or fax number, etc.
- Corporate Administrator – Corporate Administrators can manage multiple company accounts, view reports for multiple company sites, as well as create and administer company and user accounts. However, they cannot perform verification inquiries unless they register to participate in E-Verify.

*View and print reports.* All users have the capability to view and print their own reports. These reports provide statistics on the queries performed by the user(s) within the company.

*Internet resources.* E-Verify's Resources section includes a variety of resources available to assist employers with the verification process and other immigration-related matters. Some of the resources available include:

- The Web-Based Tutorial
- The E-Verify User Manual
- A Guide to Selected Travel and Identity Documents
- E-Verify Notices to be posted in the employer's hiring area
- Spanish and English versions of the E-Verify Notice of Tentative Nonconfirmation and Basic Pilot Referral Notices

*Designated agent.* An employer may choose a Designated Agent to conduct E-Verify on its behalf. The Designated Agent and the employer must sign an MOU and an Agency Agreement allowing the agent to carry out the employer's responsibilities under the MOU.

To receive information on E-Verify, or on becoming a Designated Agent, please call the SAVE Program toll free at (888) 464-4218, or fax your request for information to (202) 272-8744 or 8745, or write to the Department of Homeland Security, SAVE Program, 20 Massachusetts Ave., NW, ULLICO Building 4th Floor, Washington, DC 20529.

## *The Payroll Source*

*Photo screening tool available.* In September 2007, USCIS launched a photo-screening tool as an enhancement of E-Verify. The photo tool can be used when a new employee presents an Employment Authorization Document (EAD) or Permanent Resident Card (“green card”) to prove work authorization and identity when completing a Form I-9. It allows the employer to compare identical photos – the individual’s photo on the EAD or green card against the image stored in USCIS’s databases. The tool is designed to help an employer determine whether the document presented reasonably relates to the individual presenting it and contains a valid photo.

Employers already participating in E-Verify will be trained on the system enhancement through a mandatory refresher tutorial that launched automatically on September 17, 2007. Employers registering after that date will learn how to use the photo tool through an updated E-Verify manual, tutorial, and memorandum of understanding.

*Program rules.* Employees to be verified must be new hires after the MOU has been signed and their I-9 forms must be completed before the employer initiates a query through the system. The program may not be used to pre-screen job applicants or to reverify the employment eligibility of employees whose employment eligibility document has expired. Form I-9 requirements remain the same, except that all “List B” identity documents must contain a photograph. Verification inquiries must be made by the employer within three days of hire and cannot be selective—all employees subject to verification at an employer site must be verified.

The inquiries go to SSA’s database for confirmation. If SSA cannot confirm work authorization status, the inquiry immediately is sent to USCIS for confirmation. Generally, confirmation or nonconfirmation takes only a few seconds. If more information is needed, the employer is asked to tell the employee to contact SSA or USCIS to provide the needed information.

If a “tentative nonconfirmation” is received by the employer, it must notify the employee. If the employee does not contest the tentative nonconfirmation, it will be considered a final nonconfirmation. If the employee does contest, he or she must contact the appropriate agency office within 10 working days for verification of status. If an employer receives a final nonconfirmation from SSA or USCIS, the employer can terminate the employee and will not be subject to civil or criminal liability so long as the employer acts in good faith reliance on the information provided through the confirmation system.

**ICE partners with businesses to reduce employment of illegal aliens.** In August 2006, ICE announced a new best business practice initiative called the ICE Mutual Agreement between Government and Employers (IMAGE) program. The IMAGE program is designed to build cooperative relationships between the government and businesses in targeted sectors to strengthen hiring practices and reduce the unlawful employment of illegal aliens. It also seeks to accomplish greater industry compliance and corporate due diligence through enhanced federal training and education of employers.

*IMAGE program: employer benefits.* ICE will:

- provide training and education to IMAGE partners on proper hiring procedures, fraudulent document detection, and anti-discrimination laws.
- share data with employers on the latest illegal schemes used to circumvent legal hiring requirements.
- review hiring and employment practices of IMAGE partners and work collaboratively with them to correct isolated, minor compliance issues that are detected.

A participating company can:

- become “IMAGE-certified,” a distinction that ICE believes will become an industry standard.
- reduce unauthorized employment and identity theft.
- better protect the integrity of its workforce by helping ensure that employees are who they represent themselves to be.



## **Section 1: The Employer-Employee Relationship**

*IMAGE program: employer duties.* A company must agree to a Form I-9 audit by ICE and adhere to a series of best practices:

- use the Basic Pilot employment verification program for all new hires;
- establish an internal training program on completing employment verification forms, detecting fraudulent documents, and using the Basic Pilot program;
- permit the Form I-9 and Basic Pilot processes to be conducted only by individuals who have received this training;
- arrange for annual Form I-9 audits by neutral parties;
- establish a procedure for reporting to ICE any violations or discovered deficiencies;
- establish a protocol for responding to no-match letters from the Social Security Administration;
- establish a tip line for employees to report activity relating to the employment of unauthorized aliens, and a protocol for responding to such tips;
- establish safeguards against use of the verification process for unlawful discrimination;
- establish a protocol for assessing adherence to these best practice guidelines by contractors and subcontractors; and
- submit an annual report to ICE tracking results and assessing the effect of participation in the IMAGE program.

**Will E-Verify become mandatory?** In 2006 and 2007, the U.S. House and Senate each passed immigration reform bills that were very different in their approaches toward border security and employment of unauthorized aliens. However, both bills would have required employers to use an expanded version of the E-Verify program to verify all new hires and possibly current employees as well. Be sure to look for any developments in this area in *Payroll Currently*, APA's biweekly payroll compliance membership newsletter.

**States try to fill the immigration reform gap.** When Congress failed to act together to get an immigration reform bill enacted into law in 2006 and again in 2007, several states and localities tried to fill the gap by enacting their own legislation and executive orders.

These laws make use of various tactics to deter the hiring of unauthorized aliens, including:

- requiring public employers and government contractors to participate in the E-Verify program (Georgia, Minnesota, Oklahoma);
- denying business licenses to employers that employ unauthorized workers (Arizona, Tennessee);
- denying a business expense deduction for wages paid to unauthorized employees (Georgia);
- requiring an affirmation by the employer that it has examined the work status of all new hires and has not altered their supporting documentation (Colorado);
- imposing its own monetary penalties for hiring unauthorized aliens (West Virginia);
- fining employers that provide false records concerning an employee's work authorization (West Virginia);
- sharing information among state agencies to confirm legal work status (West Virginia); and
- requiring employers to withhold state income tax from independent contractors who fail to provide documentation verifying their work eligibility (Oklahoma).

### **1.9 New Hire Reporting**

Since 1997, payroll practitioners have been required to report information regarding newly hired and rehired employees to state agencies. This information may be used to facilitate the collection of child support and/or to uncover fraud and abuse in unemployment compensation, workers' compensation, and public assistance (welfare) benefit programs.

**Federal new hire reporting requirement.** Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, employers were required to comply with a federal new hire reporting requirement beginning October 1, 1997.<sup>61</sup> The states that did not have a new hire reporting law in existence on

---

61. P.L. 104-193.

## *The Payroll Source*

August 22, 1996 were required to establish an automated State Directory of New Hires by October 1, 1997 that can accept new hire information provided by employers. States with new hire reporting laws already in existence at that time had until October 1, 1998 to comply, but they had to begin transferring new hire information received from employers to the National Directory of New Hires by October 1, 1997. All states have laws mandating new hire reporting and setting out the procedures to be followed.

*Reporting requirement.*<sup>62</sup> For each newly hired employee, the employer must provide the following information to the state directory:

- the employee's name, address, and social security number; and
- the employer's name, address, and federal employer identification number (EIN).

Employers with employees only in one state must report newly hired employees to that state, either on paper, magnetically or electronically. Employers with employees in 2 or more states that report new hires magnetically or electronically may designate one state where they have employees as the state to which they will report all their new hires. Multistate employers that wish to file all their new hire reports with one state must designate that state to the Secretary of Health and Human Services. Employers can notify HHS in one of several ways: in writing on an HHS form or a letter that can be mailed or faxed, or on the Internet. Regardless of the method used, the following information must be provided:

- employer's name, address, phone number, and federal Employer Identification Number
- the state to which the employer will report new hires and the date on which multistate reporting will begin
- other states in which the employer has employees
- employer contact information (name, title, phone number, e-mail address, fax number)
- FEIN, name, state and zip code of any subsidiary of the employer with a different FEIN for which the employer will be reporting new hires

Completed forms and letters should be mailed to: Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, Multistate Employer Notification, P.O. Box 509, Randallstown, MD 21133; or faxed to 410-277-9325. Employers can make their designation on the Internet at the OCSE World Wide website: <http://www.acf.dhhs.gov> or download a copy of the form to complete later.



**REMINDERS SENT TO MULTISTATE EMPLOYERS** In March 2006, the OCSE mailed letters to 89,000 multistate employers to remind them of their new hire reporting responsibilities after identifying more than 63,000 multistate employers that were reporting all their newly hired employees to one state, but that were not registered with HHS. In addition, information maintained on 26,000 registered multistate employers needed to be updated as the result of a merger, acquisition, or other change.

Federal government employers must report new hires to the National Directory of New Hires. The reporting requirements do not apply to employees of federal or state agencies performing intelligence or counterintelligence functions if the head of the agency determines that such reporting would endanger the employee or compromise an ongoing agency mission.

In general, employers must report newly hired employees within 20 calendar days of the date of hire. If an employer reports new hires magnetically or electronically, it must send 2 transmissions per calendar month which are 12 - 16 days apart. States can establish their own time frames for reporting new hires, but they can be no longer than the federal requirements. Multistate employers that submit reports twice monthly must submit information for a newly hired employee as soon as possible after the date of hire, but no later than the next semimonthly pay period. All states can accept multistate new hire reports.

---

62. 42 U.S.C. §653A(a) - (c).

## **Section 1: The Employer-Employee Relationship**

Some states may require employers to report more information than the elements required by federal law. But the Office of Child Support Enforcement said that multistate employers do not have to report the required elements for every state in which they have employees—only those required by the state the employer has selected for new hire reporting purposes.<sup>63</sup>

An employee's date of hire is considered to be the first day services are performed for wages by the employee, and employees who work for as little as one day must be reported. The federal reporting requirement does not apply to independent contractors, but some states do require such reporting. Multi-state employers that choose to report all new hires to a state that does not require reporting of independent contractors do not have to report newly hired independent contractors in any state. Also, employees who are rehired after being laid off or return to work after a leave of absence do not need to be reported as a new hire if they were not removed from payroll records and do not have to complete a new Form W-4.

Temporary help agencies that pay wages to the employees they refer are responsible for reporting them as new hires. If the agency merely refers individuals for jobs, and they are paid by the client, the client is the employer and must report the new hires. Labor unions and hiring halls must report their own newly hired employees, but not individuals who are referred for employment.

*Reporting format and method.* Employers can report new hires on the employee's Form W-4 or an equivalent form containing the required information, and can transmit the report by first class mail, fax, magnetically, electronically, or over the Internet. Using the employee's Form W-4 to meet the new hire reporting requirement entails a burden not previously faced by employers, since the employer identifying information does not otherwise need to be placed on a Form W-4 unless the form is being submitted upon written request to the IRS (see Section 6.3-1). Because Form W-4 cannot be altered to include additional information (see section 6.3-1), the IRS advises that employers should use a copy of the original form if other information will be written on the form (e.g., date of birth) before it is filed for new hire reporting purposes.

*Penalties for failure to report new hires.*<sup>64</sup> States have the option to set a civil penalty of up to \$25 for a failure to comply with the new hire reporting requirements, with a \$500 maximum if the failure to comply is the result of a conspiracy between the employer and the employee.

*Information processing.*<sup>65</sup> The state has 5 business days to enter information reported by employers into the State Directory of New Hires data base, and 2 business days from the date of entry to transmit a child support withholding order (if one is in effect against the employee) to the employee's employer containing the periodic amount to withhold (including any past due amounts). Within 3 business days from the date of entry, the state must furnish new hire information to the National Directory of New Hires so it can be matched with records from other state directories. In addition to enforcement of child support obligations, states can use new hire information to aid in administration of their unemployment compensation, workers' compensation, and certain other government benefit programs to cut down on fraud and abuse.

Table 1.2 summarizes many of the provisions in the individual state new hire reporting laws. Since all states require employers filing new hire reports magnetically or electronically to report twice monthly from 12-16 days apart, this information is not included for each state in the table. [For more information on state new hire reporting requirements for employees and independent contractors, see Tables 5.1 and 5.2 of *APA's Guide to State Payroll Laws*.]

---

63. OCSE-AT-98-06, 3-2-98.

64. 42 U.S.C. §653A(d).

65. 42 U.S.C. §653A(e) - (h).

## The Payroll Source

Table 1.2

<b>STATE NEW HIRE REPORTING REQUIREMENTS</b>							
State	Who Must Report	Employees To Report	What to Report	When to Report	How to Report	Late Report Penalty	Contact Information
Alabama	All employers	New hires, rehires and recalls	Federal elements; date of hire, state ID number	Within 7 days of hire, rehire, or recall	W-4 or equivalent; mail, fax, mag media or electronically	\$25	334-353-8491  <a href="http://dir.alabama.gov/nh">http://dir.alabama.gov/nh</a>
Alaska	All employers	New hires and rehires	Federal elements	Within 20 days of hire	W-4 or equivalent, mail, fax, mag media or electronically	\$10; \$100 for conspiracy	877-269-6685 907-269-6089  <a href="http://www.childsupport.alaska.gov/FAQ/FAQ_New.Hires.asp">www.childsupport.alaska.gov/FAQ/FAQ_New.Hires.asp</a>
Arizona	All employers	New hires and rehires	Federal elements	Within 20 days of hire	W-4 or equivalent, mail, fax, mag media or electronically	No penalty	888-282-2064 602-340-0555  <a href="http://www.az-newhirereporting.com/az-newhire/default.asp">www.az-newhirereporting.com/az-newhire/default.asp</a>
Arkansas	All employers	New hires and rehires	Federal elements	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, mag media or electronically, e-mail	No penalty	800-259-2095 501-376-2125  <a href="http://www.ar-newhirereporting.com/ar-newhire/default.asp">www.ar-newhirereporting.com/ar-newhire/default.asp</a>
California	All employers	New hires and rehires; contractors over \$600	Federal elements; date of hire; state EIN; date, dollar amount, expiration date of contract	Within 20 days of hire or rehire; or after \$600 minimum is met or contract is signed, whichever is earlier	W-4 or equivalent, state form DE 34; mail, fax, mag media or electronically	\$24, \$490 for conspiracy	916-651-6945  <a href="http://www.edd.ca.gov/taxrep/taxner.htm">www.edd.ca.gov/taxrep/taxner.htm</a>
Colorado	All employers	New hires and rehires	Federal elements	Within 20 days of hire or rehire or 1st payroll after hire	W-4 or equivalent, mail, fax, mag media or electronically	No penalty	303-297-2849 800-696-1468  <a href="http://www.newhire.state.co.us/newhire/do">www.newhire.state.co.us/newhire/do</a>
Connecticut	All employers	New hires and rehires; contractors if contract exceeds \$5,000 for calendar year	Federal elements; state EIN	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, Internet, or electronically	No penalty	860-263-6310  <a href="http://www1.ctdol.state.ct.us/newhires/index.asp">www1.ctdol.state.ct.us/newhires/index.asp</a>
Delaware	All employers	New hires and rehires	Federal elements	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, mag media or electronically	\$25, \$500 for conspiracy	302-577-7171  <a href="http://www.dhss.delaware.gov/dcse/nhr.html">www.dhss.delaware.gov/dcse/nhr.html</a>
District of Columbia	All employers	All new hires and rehires	Federal elements; date of birth, salary, date of hire; UI ID number: optional: health ins. availability, employer contact, employee's gender	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, mag media, e-mail, Internet or electronically	\$25, \$500 for conspiracy	877-846-9523  <a href="https://newhire-reporting.com/dc-newhire/">https://newhire-reporting.com/dc-newhire/</a>

**Section 1: The Employer-Employee Relationship**

<b>STATE NEW HIRE REPORTING REQUIREMENTS</b>							
<b>State</b>	<b>Who Must Report</b>	<b>Employees To Report</b>	<b>What to Report</b>	<b>When to Report</b>	<b>How to Report</b>	<b>Late Report Penalty</b>	<b>Contact Information</b>
Florida	All employers	All new hires and rehires	Federal elements; date of hire; date of birth (optional)	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, mag media or electronically	No penalty	888-854-4791 850-656-3343  <a href="https://newhirereporting.com/fl-newhire/default.asp">https://newhirereporting.com/fl-newhire/default.asp</a>
Georgia	All employers	All new hires and rehires	Federal elements; date of birth, UI ID# or UBI ID#	Within 10 days of hire or rehire	W-4 or equivalent, mail, fax, mag media or electronically	Written warning	888-541-0469 404-525-2985  <a href="https://newhirereporting.com/ga-newhire/default.asp">https://newhirereporting.com/ga-newhire/default.asp</a>
Hawaii	All employers	All new hires and rehires	Federal elements	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, mag media or electronically	\$25, \$500 for conspiracy	808-692-7029  <a href="http://hawaii.gov/ag/csea/main/pis/locate#NDNH">http://hawaii.gov/ag/csea/main/pis/locate#NDNH</a>
Idaho	All employers	All hires and rehires	Federal elements; date of hire; UI ID	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, phone, mag media, e-mail, Internet or electronically	No penalty	800-627-3880  <a href="https://cl.idaho.gov/applications/newhire/Default.aspx">https://cl.idaho.gov/applications/newhire/Default.aspx</a>
Illinois	All employers	All new hires	Federal elements; optional: date of hire; alternate address for income withholding orders	Within 20 days of hire	W-4 or equivalent, mail, fax, mag media, Internet or electronically	\$15, \$500 for conspiracy	800-327-4473  <a href="http://www.ides.state.il.us/employer/newhire/general.asp">www.ides.state.il.us/employer/newhire/general.asp</a>
Indiana	All employers	All new hires	Federal elements; date of hire	Within 20 days of hire	W-4 or equivalent, mail, fax, mag media, Internet or electronically	\$500 for conspiracy	866-879-0198 317-612-3028  <a href="https://newhirereporting.com/in-newhire/default.asp">https://newhirereporting.com/in-newhire/default.asp</a>
Iowa	All employers	All hires and rehires; independent contractors over \$600	Federal elements; date of birth; health insurance; address to send income withholding orders; start date of contract; payor's phone number	Within 15 days of hire, rehire, or contract	W-4 or equivalent, mail, fax, phone, mag media or electronically	Contempt of court	877-274-2580  <a href="https://dhssecure.dhs.state.ia.us/epay">https://dhssecure.dhs.state.ia.us/epay</a>
Kansas	All employers	All new hires and rehires	Federal elements	Within 20 days of hire	W-4 or equivalent, mail, fax, e-mail, Internet or electronically	No penalty	888-219-7801 913-296-1716  <a href="http://www.dol.ks.gov/ui/html/newhires_BUS.html">www.dol.ks.gov/ui/html/newhires_BUS.html</a>
Kentucky	All employers	All new hires, rehires and job refusals	Federal elements; state EIN	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, mag media or electronically	\$250 for 3rd and later offenses	800-817-2262  <a href="http://www.newhire-usa.com/ky/">www.newhire-usa.com/ky/</a>

***The Payroll Source***

<b>STATE NEW HIRE REPORTING REQUIREMENTS</b>							
<b>State</b>	<b>Who Must Report</b>	<b>Employees To Report</b>	<b>What to Report</b>	<b>When to Report</b>	<b>How to Report</b>	<b>Late Report Penalty</b>	<b>Contact Information</b>
Louisiana	All employers	All new hires and rehires	Federal elements; occupation	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, Internet phone, mag media or electronically	\$25; \$500 for conspiracy	888-223-1461  www.dss.state.la.us/departments/dss/New_Hire_registry.html
Maine	All employers	All new hires and rehires	Federal elements; date of birth; UI or UBI number	Within 7 days of hire or rehire	W-4 or equivalent, mail, fax, phone, mag media or electronically	Written warning, then \$200 per month	207-624-7880  www.maine.gov/dhhs/OIAS/dser/employer/index.html
Maryland	All employers	All new hires	Federal elements; date of hire; medical benefits availability; starting wage; UI ID	Within 20 days from hire	W-4 or equivalent, mail, fax, mag media or electronically	\$20, \$500 for conspiracy	888-634-4737 410-281-6000  https://newhirereporting.com/md-newhire/default.asp
Massachusetts	All employers	All new hires and rehires; contractors over \$600	Federal elements; date of hire or contract	Within 14 days of hire, rehire or contract	W-4 or equivalent, mail, fax, mag media or electronically; Internet required if employer has 25 employees or contractors	\$25; \$500 for conspiracy	617-626-4154  www.mass.gov/?pageID=mg2homepage&L=1&LO=Home&sid=massgov2
Michigan	All employers	All new hires	Federal elements	Within 20 days of hire	W-4 or equivalent, mail, fax, Internet mag media or electronically	No penalty	800-524-9846  http://mi-newhire.com/MI-Newhire/default.aspx
Minnesota	All employers	All new hires, and rehires; government contractors	Federal elements; optional: date of birth; date of hire; state of hire	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, phone, mag media or electronically	\$25, \$500 for conspiracy	800-672-4473 651-227-4661  https://newhirereporting.com/mn-newhire/default.asp
Mississippi	All employers	All new hires and rehires; independent contractors paid on a recurring basis	Federal elements; date of hire; date of birth; state EIN; date contractor begins services	Within 15 days of hire or rehire; date of contract for contractors	W-4 or equivalent, mail, fax, e-mail, or Internet	\$25, \$500 for conspiracy	800-241-1330 404-808-9016  https://newhirereporting.com/ms-newhire/default.asp
Missouri	All employers	All new hires	Federal elements	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, or electronically	\$25, \$350 for conspiracy	800-585-9234 800-859-7999  www.dss.mo.gov/cse/newhire.htm

**Section 1: The Employer-Employee Relationship**

<b>STATE NEW HIRE REPORTING REQUIREMENTS</b>							
<b>State</b>	<b>Who Must Report</b>	<b>Employees To Report</b>	<b>What to Report</b>	<b>When to Report</b>	<b>How to Report</b>	<b>Late Report Penalty</b>	<b>Contact Information</b>
Montana	All employers	All new hires and rehires	Federal elements; date of hire; optional: date of birth; medical insurance availability	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, phone, mag media, Internet or electronically	No penalty	888-866-0327 406-444-9290  www.dphhs.mt.gov/csed/relatedtopics/employerinformation.shtml
Nebraska	All employers	All new hires and rehires	Federal elements; date of hire or rehire	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, Internet, mag media or electronically	\$25	888-256-0293 402-691-9957  https://newhirereporting.com/ne-newhire/default.asp
Nevada	All employers	All new hires	Federal elements	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, mag media or electronically	\$25	888-639-7241 775-684-8685  https://uitax.nvde-tr.org/crphml/new_hire_info.htm
New Hampshire	All employers	All new hires and rehires; contractors over \$2,500	Federal elements; UI ID; optional: date of hire; work state	Within 20 days of hire or rehire	W-4 or equivalent, W-9 for contractors, mail, fax, mag media or electronically	\$25, \$500 for conspiracy	800-803-4485 603-229-4371  www.nh.gov/nhes/documents/newhire.pdf
New Jersey	All employers	All new hires, rehires and contractors	Federal elements; date of birth; optional: date of hire	Within 20 days of hire or rehire; every 15 days on mag media	W-4 or equivalent, mail, fax, electronically, or Internet	\$25, \$500 for conspiracy	888-624-6339 877-654-4737  https://newhirereporting.com/nj-newhire/default.asp
New Mexico	All employers	All new hires	Federal elements	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, or electronically	\$20, \$500 for conspiracy	888-878-1607 505-995-8230  https://newhirereporting.com/nm-newhire/default.asp
New York	All employers	All new hires and rehires	Federal elements	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, Internet, mag media or electronically	\$20, \$450 for conspiracy	800-972-1233 800-225-5829  www.tax.state.ny.us/wt/newhire.htm
North Carolina	All employers	All new hires and rehires	Federal elements; state EIN	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, phone, e-mail, mag media or electronically	\$25, \$500 for conspiracy	888-514-4568  https://newhirereporting.com/nc-newhire/default.asp

***The Payroll Source***

<b>STATE NEW HIRE REPORTING REQUIREMENTS</b>							
<b>State</b>	<b>Who Must Report</b>	<b>Employees To Report</b>	<b>What to Report</b>	<b>When to Report</b>	<b>How to Report</b>	<b>Late Report Penalty</b>	<b>Contact Information</b>
North Dakota	All employers	All new hires	Federal elements	Within 20 days of hire	W-4 or equivalent, mail, fax, mag media, e-mail, Internet or electronically	\$20, \$250 for conspiracy	800-755-8530 701-328-3582  www.nd.gov/dhs/services/childsupport/empinfo/newhire
Ohio	All employers	All new hires and rehires; independent contractors	Federal elements; date of birth; date of hire; date payments begin to contractors; length of time contractor will perform services	Within 20 days of hire or rehire; or engagement/re-engagement of a contractor; or contractor resumes providing services.	W-4 or equivalent, mail, fax, mag media, e-mail, Internet or electronically	\$25, \$500 for a conspiracy	888-872-1490 614-221-5330  https://newhirereporting.com/oh-newhire/default.asp
Oklahoma	All employers	All new hires	Federal elements; date of hire; state of hire	Within 20 days of hire	W-4 or equivalent, mail, fax, Internet, mag media or electronically	No penalty	800-317-3785 405-557-7133  www.okdhs.org/programsandservices/cse/buspart/emp/newhire/
Oregon	All employers	All new hires and rehires	Federal elements	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, mag media	No penalty	503-378-2868  http://dcs.state.or.us/employers
Pennsylvania	All employers	All new hires and rehires	Federal elements; date of hire; employer contact information	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, or mag media	Written warning, \$25 for later violations, \$500 for conspiracy	888-724-4737  www.panewhires.com
Rhode Island	All employers	All new hires and rehires	Federal elements; health insurance; wage withholding address; optional: date of birth; date of hire; state of hire	Within 14 days of hire or rehire	W-4 or equivalent, mail, fax, phone, e-mail, mag media or electronically	\$20, \$500 for conspiracy	888-870-6461  www.rinewhire.com
South Carolina	All employers	All new hires and rehires	Federal elements; optional: date of birth; date of hire; employer phone number	Within 20 days of hire	W-4 or equivalent, mail, fax, mag media or electronically	\$25 for second offense, \$500 for conspiracy	888-454-5294 803-898-9235  www.state.sc.us/dss/csed/newhire.htm
South Dakota	All employers	All new hires and rehires	Federal elements	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, mag media or electronically	Civil proceeding for a petty offense	888-827-6078 605-626-2942  www.state.sd.us/applications/LD01DOL/frameset.asp?navid=305&filtertype=1
Tennessee	All employers	All new hires and rehires	Federal elements; date of hire	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, mag media	\$20, \$400 for conspiracy	888-715-2280  www.tnnewhire.com



**Section 1: The Employer-Employee Relationship**

<b>STATE NEW HIRE REPORTING REQUIREMENTS</b>							
<b>State</b>	<b>Who Must Report</b>	<b>Employees To Report</b>	<b>What to Report</b>	<b>When to Report</b>	<b>How to Report</b>	<b>Late Report Penalty</b>	<b>Contact Information</b>
Texas	All employers	All hires and rehires	Federal elements; optional: date of birth; date of hire; salary; payroll address to mail notice to withhold child support	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, or electronically	\$25; \$500 for conspiracy	888-839-4473  <a href="https://portal.cs.oag.state.tx.us/wps/portal/employerhome">https://portal.cs.oag.state.tx.us/wps/portal/employerhome</a>
Utah	All employers	All new hires and rehires	Federal elements; optional: date of hire; job title; work status	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, mag media	\$25; \$500 for conspiracy	801-526-4361  <a href="http://jobs.utah.gov/ui/employer/login.aspx">http://jobs.utah.gov/ui/employer/login.aspx</a>
Vermont	All employers	All new hires and rehires	Federal elements	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, phone, mag media or electronically	\$500 for conspiracy	800-786-3214 802-241-2194  <a href="https://uipublic.labor.vermont.gov/OnlineNewhire/pages/newhirehome.aspx">https://uipublic.labor.vermont.gov/OnlineNewhire/pages/newhirehome.aspx</a>
Virginia	All employers	All new hires	Federal elements	Within 20 days of hire	W-4 or equivalent, mail, fax, mag media or electronically	No penalty	800-979-9014 804-771-9733  <a href="https://newhirereporting.com/va-newhire/default.asp">https://newhirereporting.com/va-newhire/default.asp</a>
Washington	All employers	All hires and rehires	Federal elements; date of birth	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, mag media or electronically	\$25; \$500 for conspiracy	800-562-0479  <a href="http://www1.dshs.wa.gov/newhire/">www1.dshs.wa.gov/newhire/</a>
West Virginia	All employers	All hires and rehires	Federal elements; payroll address (if different); optional: date of birth; income information	Within 14 days of hire or rehire	W-4 or equivalent, mail, fax, phone, mag media or electronically	\$25; \$500 for conspiracy	877-625-4669 304-346-9513  <a href="https://newhirereporting.com/wv-newhire/default.asp">https://newhirereporting.com/wv-newhire/default.asp</a>
Wisconsin	All employers	All new hires and rehires	Federal elements; date of birth; date of hire	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, mag media or electronically	\$25; \$500 for conspiracy	888-300-4473  <a href="http://www.newhire-usa.com/wi/">www.newhire-usa.com/wi/</a>
Wyoming	All employers	All new hires	Federal elements; optional: date of birth; date of hire	Within 20 days of hire or rehire	W-4 or equivalent, mail, fax, mag media or electronically	No penalty	800-970-9258 307-638-1675  <a href="https://newhirereporting.com/wy-newhire/default.asp">https://newhirereporting.com/wy-newhire/default.asp</a>

## **1.10 Review Questions and Exercises**

### **Review Questions**

1. List the factors used in determining whether a business has the right to control the financial aspects of a worker's activities.
2. What are the four categories of statutory employees?
3. What are the two categories of statutory nonemployees?
4. Compare a temporary help agency employee and a leased employee.
5. When leasing an employee or using a temporary help agency, aside from looking at the cost, what should you know about the overall company that you are dealing with to avoid having to pay any withholding or employment taxes?
6. What are the three parts of the ABC test, and what is the test used to determine?
7. What is Form I-9 used for?
8. When a client company hires leased employees, who is responsible for withholding and/or paying federal income, social security, Medicare, and FUTA taxes?
9. What factors do the courts and the Department of Labor consider when making an employment status determination under the FLSA?
10. Why would many employers rather use workers who are not employees to perform services for them?
11. What does a social security card prove in terms of an employee's work authorization status under IRCA?
12. Which factors are considered not to be important by the IRS in making a worker classification determination because of changes in the workplace over the years?
13. What information must be reported by an employer for each new hire under the federal new hire reporting requirement?
14. When must employers report newly hired employees under the federal new hire reporting requirement?
15. What is the name of the program employers can use to verify the employment authorization status of new hires with U.S. Citizenship and Immigration Services?

### **True or False Questions**

- \_\_\_\_\_ 1. If the employer has the right to control what work will be done and how that work will be done, an employer-employee relationship exists.
- \_\_\_\_\_ 2. Full-time life insurance salespersons are always considered statutory employees and are never subject to FUTA tax.
- \_\_\_\_\_ 3. Workers hired through a temporary help agency are not employees of the client company.

## **Section 1: The Employer-Employee Relationship**

- \_\_\_ 4. Telemarketers working under the direction of a company are usually independent contractors.
- \_\_\_ 5. An accountant who provides bookkeeping and payroll services to several local businesses and works at her own office is an independent contractor.
- \_\_\_ 6. The responsibility for determining the employment status of an individual who performs services rests with the employer.
- \_\_\_ 7. If an independent contractor timely provides the employer with a correct Taxpayer Identification Number, there will be no backup withholding.
- \_\_\_ 8. The IRS usually relies on the reasonable basis test in making employment status determinations.
- \_\_\_ 9. Managers and executives are excluded from the employer-employee relationship for tax purposes.
- \_\_\_ 10. Length of employment makes no difference in determining employment status.
- \_\_\_ 11. Technical services specialists are specifically excluded from the “reasonable basis” test.
- \_\_\_ 12. Under the ABC test, one of the determining factors is whether the worker in question is free from control or direction in performing the work both by agreement and in reality.
- \_\_\_ 13. Part-time employees are not covered under the federal payroll tax laws even if they meet the common law test for employment status.
- \_\_\_ 14. “Reciprocity agreements” require employers to withhold state income tax only for their employees’ states of residence.
- \_\_\_ 15. Employers can demand specific documents to prove an employee’s eligibility to work in the U.S.
- \_\_\_ 16. Employers who claim Section 530 status for their workers because a significant segment of their industry classifies similar workers the same way must show that at least 50% of the industry treats these workers as independent contractors.
- \_\_\_ 17. An employer that changes its classification of a worker from independent contractor to employee may still claim Section 530 protection for the period before the change in treatment.
- \_\_\_ 18. An IRS agent conducting an employment tax audit must give the employer written notice of the availability of the Section 530 protections.
- \_\_\_ 19. Under the federal new hire reporting requirements, multistate employers must report a new hire to the state in which the employee works.

## *The Payroll Source*

### Multiple Choice Questions

- \_\_\_\_\_ 1. Which of the following forms may be completed and submitted to the IRS to determine the employment status of an individual for federal income and employment tax purposes?
- a. Form SS-4
  - b. Form SS-5
  - c. Form SS-8
  - d. Form W-9
- \_\_\_\_\_ 2. Which of the following forms must be submitted to an independent contractor (who is paid at least \$600) after the end of the year for services performed during that year?
- a. Form W-2
  - b. Form 1099-MISC
  - c. Form 1096
  - d. Form SS-8
- \_\_\_\_\_ 3. All of the following types of evidence support an employer's treatment of a worker as an independent contractor under the "reasonable basis" test EXCEPT:
- a. Place of work
  - b. Court decisions
  - c. Private letter rulings
  - d. Past IRS employment tax audits
- \_\_\_\_\_ 4. All of the following criteria would be typical of an independent contractor EXCEPT:
- a. Works off site
  - b. Paid by the hour
  - c. Furnishes own tools
  - d. Sets own work hours
- \_\_\_\_\_ 5. Each of the following individuals would be classified as an employee EXCEPT:
- a. Controller of a company
  - b. College professor
  - c. Attorney (solo practitioner)
  - d. City police officer
- \_\_\_\_\_ 6. All of the following workers are statutory employees EXCEPT:
- a. Full-time life insurance salespersons
  - b. Qualified real estate agents
  - c. Homeworkers
  - d. Traveling or city salespersons
- \_\_\_\_\_ 7. Full-time life insurance salespersons paid solely by commission are exempt from:
- a. Social security and Medicare taxes
  - b. Social security tax only
  - c. FUTA tax
  - d. Social security, Medicare, and FUTA taxes

**Section 1: The Employer-Employee Relationship**

- \_\_\_\_ 8. If an employer fails to withhold social security and Medicare taxes and does not file a Form W-2 or a Form 1099 for an individual, what penalty may the IRS impose?
- a. 10% of the employee's share of social security and Medicare taxes
  - b. 20% of the employee's share of social security and Medicare taxes
  - c. 40% of the employee's share of social security and Medicare taxes
  - d. 100% of the employee's share of social security and Medicare taxes
- \_\_\_\_ 9. How long must an employer retain a Form I-9 for a terminated employee who worked for the employer for more than four years?
- a. 1 year after termination
  - b. 3 years after termination
  - c. 7 years after termination
  - d. Does not have to keep terminated employees' I-9 forms
- \_\_\_\_ 10. Which of the following situations describes one of the general requirements that must be met for workers to be considered statutory employees?
- a. They have a continuing relationship with the employer
  - b. They have a substantial investment in the business equipment
  - c. They are licensed real estate agents
  - d. Most of their compensation is related to sales
- \_\_\_\_ 11. Each of the following goals is a reason why states might require employers to report newly hired employees EXCEPT:
- a. to detect welfare fraud
  - b. to detect unemployment compensation fraud
  - c. to locate individuals who have not claimed state lottery winnings
  - d. to locate noncustodial parents subject to a child support withholding order
- \_\_\_\_ 12. Which of the following individuals are statutory nonemployees?
- a. homeworkers
  - b. full-time life insurance salespersons
  - c. newspaper deliverers
  - d. traveling salespersons

