

THE ARIZONA REPUBLIC

azcentral.com

10.28.07

ASK THE EXPERTS

A weekly Q&A where CareerBuilder experts offer advancement strategies.

I was, until a month ago, working at a small trucking company where the owner treated everyone as an independent contractor to avoid employment taxes. I worked in the owner's office, using his equipment for duties during daytime hours. I also drove out of state occasionally, as I was the relief driver. The owner had control of all aspects of the business. There were no benefits, and the self-employment penalty tax I had to pay certainly gouged into my earnings. Could the Department of Labor or the IRS reclassify me as an employee? Would I be able to recover any taxes I had to pay?

Expert No. 1 If an employer wrongfully classifies an employee as an independent contractor and does not withhold income taxes, Social Security, and Medicare from compensation, the employee may request a determination of status filing IRS Form SS-8. The IRS defines workers as independent



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contractors, common-law employees, statutory employees or statutory non-employees. You can see IRS Publication 15-A for information, but the largest category is common-law employee. The IRS has a 20-factor test to determine whether a worker is a common-law employee. Here, the fact that you worked in the owner's office, used his equipment and were subject to his control of the business suggests you may have been a common-law employee. Therefore, you may want to consult a tax professional about filing a Form SS-8 and amend your tax returns accordingly.

Expert No. 2 First, you should report your employer to the IRS. The employer is responsible for payment of all payroll taxes (FICA, FUTA, Medicare, etc). The law permits the employer to take money from the employee's



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wages to pay a portion of those taxes. If the employer fails to deduct those taxes from your paycheck on an ongoing basis, he loses the right to get them from you. The employer should be responsible for all payroll taxes, and you should get a refund of all such taxes as you had to pay for being an "independent contractor."

Second, you are entitled to receive at least minimum wage, as well as overtime, for all time you spent operating business equipment that moved information in interstate commerce (fax, e-mails, telephones). For this, you should contact the Wage-Hour Division of the U.S. Department of Labor.

Send questions to Ask the Experts, The Arizona Republic, 200 E. Van Buren St., NM19, Phoenix, AZ 85004. E-mail to newsexperts@arizona-republic.com. or fax (602)-444-8044.