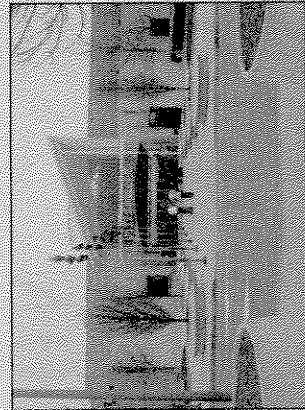


BUSINESS

The 12.02.08



The owner of two North Jersey malls gets an extension on paying \$900 million in debt. **3**



Gift cards appear to be among some of their allure.

DOW

Close 679.95 8,149.09

S&P 500

Close 80.03 816.21

NASDAQ

Close 137.50 1,39

ASK A LAWYER

It's vital to determine correct status of workers

Q. My company considers the members of our sales force to be independent contractors. Should the company have any concerns?

Yes. It is critical that the company correctly determine whether workers are employees or independent contractors. Companies generally must withhold income taxes, withhold and pay Social Security and Medicare taxes and pay unemployment taxes on wages paid to employees.

Companies generally do not have these obligations with regard to independent contractors. The consequences of treating an employee as an independent contractor could be substantial. If a company has no reasonable basis for the misclassification, it may be held liable for all back employment taxes for each misclassified worker, plus penalties and interest.

To determine whether a worker is an employee or an independent contractor, companies must examine the relationship between the worker and the business. All evidence of control and independence should be considered. For example, does the business have a right to direct or control how the work is performed, whether through instructions, training or other means? If yes, the worker is probably an employee. Does the business have a right to direct or control the financial or business aspects of the job? If the company reimburses the worker for business expenses, or provides the office or

tools to perform the services, again the worker is probably an employee. Finally, how the parties perceive their relationship will be examined. Is there a written contract or are there employee-type benefits (e.g., vacation or sick days, health insurance or a pension plan)? Has the company issued IRS Form 1099 or a W-2 to the worker? Is the worker permitted to perform services for other companies? How long has the relationship been in place and is the work performed related to a key aspect of the business?

Businesses must weigh many factors when determining whether a worker is an employee or an independent contractor. There are no set number of factors and no one factor stands alone in making this determination. Look at the entire relationship. Consider the degree and extent of the employer's right to direct and control and document each of the factors used in making the determination.

Steven Adler heads the employment law department of Cole, Schotz, Meisel, Forman & Leonard PA, the largest law firm in Bergen County. He can be reached at sadler@coleschotz.com, or 201-525-6273. This is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of a client.

Do you have a business question for a lawyer? Send it to BusinessNews@northjersey.com.