

A Jeff Foxworthy-Based Test for Independent Contractor Classification

Article By:

Michael S. Kun

There is a comedian by the name of Jeff Foxworthy who has been enormously popular for the past two decades or so.

Perhaps you are familiar with him. (And if you are, you probably thought that you stumbled upon the wrong blog just now.)

Remarkably, Mr. Foxworthy's name comes up frequently when talking about whether workers have been properly classified as independent contractors. Not because there is anything funny about that issue; there isn't. And not because Mr. Foxworthy was misclassified as an independent contractor. Instead, his name pops up because Mr. Foxworthy has inadvertently provided the structure for a test companies can use to get a sense for whether they have a misclassification issue.

Let me explain.

There is a misconception that there is a single test used nationwide to determine whether workers should be classified as employees or as independent contractors. There isn't. There are a number of different tests used in different contexts and in different jurisdictions – and, in some cases, there are different tests within the same jurisdiction. Take California, where some industries/jobs are analyzed under the “ABC test” set forth in the statute referred to as AB 5, while others are analyzed under what is known as the [Borello test](#).

There is another misconception – that having an independent contractor agreement alone is enough to establish an independent contractor relationship. It isn't. While such an agreement may provide critical evidence that the worker intended to be treated as an independent contractor, or agreed to certain terms that would support an independent contractor relationship, the agreement alone is rarely dispositive of the issue. Instead, courts and agencies typically look beyond the existence of the agreement to see if, in practice, the relationship truly is an independent contractor relationship rather than an employer-employee relationship.

Misclassifying a worker as an independent contractor can be costly for any company. It can result in litigation where the worker can recover alleged unpaid wages, unpaid overtime, liquidated damages, attorney's fees and, in some jurisdictions, unreimbursed expenses, meal and rest period premiums,

and additional penalties.

Determining whether an individual should be classified as an employee or an independent contractor usually requires a review of documents, interviews about the relationship and the work performed, a determination of the applicable standard, and an application of the facts to the applicable standard.

But if a company just wants to take a quick look to determine whether it might have an issue – and whether a fuller analysis is warranted — there is no better place to start than Jeff Foxworthy.

You see, Mr. Foxworthy is from the South, and he gained fame through jokes he told about being a “redneck.” The jokes typically had the same structure: if you engage in a certain type of conduct, you just might be a redneck.

For instance, “If your dog and your wallet are both on a chain, you just might be a redneck.” Or “If your house has wheels and your car doesn’t, you just might be a redneck.”

While the various independent contractor analyses used by courts and agencies differ, they all generally look to the extent to which the worker is a part of the hiring entity’s business rather than his or her own business. Accordingly, the Jeff Foxworthy-based test for independent contractors looks at the types of factors that would suggest an individual might be an employee, rather than an independent contractor. It’s not intended to be funny by any means, but just a good way to remember the types of factors that generally should be reviewed. It goes as follows:

- If a worker is doing the same kind of work as your own employees, they just might be an employee.
- If a worker is working side-by-side with your own employees, they just might be an employee.
- If a worker is doing the work of your company, they just might be an employee.
- If a worker has a desk or office in your facility, they just might be an employee.
- If a worker has a uniform with your company’s name on it, they just might be an employee.
- If a worker has a mailing address, an email address or a telephone number through your company, they just might be an employee.
- If a worker has a business card with your company’s name on it, they just might be an employee.
- If a worker drives a vehicle with your company’s name on it, they just might be an employee.
- If you give a worker the tools to perform the job or reimburse for those tools, they just might be an employee.
- If you give a worker a vehicle to use for work or reimburse for mileage, they just might be an employee.

- If you set a worker's hours, they just might be an employee.
- If you give supervision or direction to a worker, they just might be an employee.
- If you care about anything other than the final product of a worker's work, they just might be an employee.
- If a worker is not allowed to provide services for other companies, they just might be an employee.

If you have a worker you are classifying as an independent contractor, and if you found yourself nodding as you went through that test, you just might want to think about doing a fuller analysis of the relationship — and perhaps making some changes as a result.

©2024 Epstein Becker & Green, P.C. All rights reserved.

National Law Review, Volumess XIII, Number 263

Source URL: <https://www.natlawreview.com/article/jeff-foxworthy-based-test-independent-contractor-classification>