

## Independent Contractors

### Objectives:

- Discuss the difference between independent contractors and employees
- Discuss ramifications of confusing the two

## Independent Contractors

- Specific requirements:
  - The contractor owns or is financing the logging equipment being used.
  - The contractor makes decisions regarding the hiring and firing of employees.
  - The contractor complies with specific Federal and State laws.
  - The contractor provides services or products to the markets that bring the best prices.

## Logging Contractors, continued

- Full-Time
  - Operates year-round
  - Major source of income is derived from harvesting timber
  - Usually better equipped and produces larger quantities of wood than the casual contractor.

## Logging Contractors, continued

- Service
  - A special kind of full-time contractor
  - Normally operates under a contract to perform specific services (i.e., cutting, skidding, hauling)
  - Consequently, this type of contractor never actually owns the stumpage being cut.

## Logging Contractors

- Casual
  - A part-time operator who sells small quantities of wood on an unscheduled basis
  - The major portion of the casual contractor's income comes from other sources
  - An example of this type of contractor is a farmer/construction worker who cuts timber in the winter months.

## The “independent contractor doctrine”

- Body of law defining independent contractors, their legal rights and responsibilities
- Why important?

## Why misclassify?

## What is at stake?

Employed forest workers:

Logging contractors:

Procurement managers:

Forest Industry:

## Employees vs. Independent Contractors

Employees:

- Employer has right to control manner and means as well as end results

Contractors:

- controls manner and means

## Common Law Tests

### *Criteria to Establish Independence*

Based on the following:

- centuries of case law in England and US
- IRS (Social Security, Federal Unemployment Compensation Tax, Fed income tax)
- Nat'l Labor Relations Act (right to unionize)
- Equal Employment Opp. Commission (outlawing discrimination)
- Fair Labor Standards Act (min. wage, overtime, employment of minors)
- Migrant/Seasonal Worker Protection Act
- Unemployment compensation laws
- Workers' compensation insurance

## IRS "20 Test"

*Affirmative responses suggests employee classification*

- |                                |  |
|--------------------------------|--|
| 1. Integration                 | 11. Full time required                   |
| 2. Employer's Premises         | 12. More than one firm                   |
| 3. Continuing Relationship     | 13. Personal service required            |
| 4. General Public              | 14. Instructions                         |
| 5. Opportunity for profit/loss | 15. Training                             |
| 6. Significant investment      | 16. Oral or written reports              |
| 7. Furnish Tools/Materials     | 17. Order or sequence set                |
| 8. Pay Business/Travel Exp.    | 18. Right to discharge                   |
| 9. Pay be unit                 | 19. Right to terminate                   |
| 10. Set hours                  | 20. Hire, fire, pay and supervise others |

## Pass/Fail Tests

1. Integration
  - Provide services that are integrated into the other party's business?
2. Employer's Premises
  - Do their work on the other party's premises?
3. Continuing Relationship
  - Have a continuing working relationship with the other party?
4. General Public
  - Do not offer services to the general public?

### Economic Tests

5. Opportunity for profit/loss
  - Cannot make a profit or suffer a loss?
6. Significant investment
  - Lack a major investment in facilities used to perform the service?
7. Furnish Tools/Materials
  - Rely on the other party to furnish the tools or materials?
8. Pay Business/Travel Exp.
  - Receive payments for business or travel expenses?
9. Pay by unit
  - Receive payment of regular amounts at set intervals?

### Time Tests

10. Set hours
  - Must follow set hours of work?
11. Full time required
  - Work full time for the other party?
12. More than one firm
  - Work for one party at a time?
13. Personal service required (special skill set)
  - Provide services that must be rendered personally?

### Skills Tests

14. Instructions
  - Must comply with the other party's instructions about the work?
15. Training
  - Receive training from or at the direction of the other party?
16. Oral or written reports
  - Must submit regular reports to the other party?
17. Order or sequence set
  - Must do work in a sequence set by the other party?

### Contract Obligation Tests

18. Right to discharge (can be fired)
  - Can be fired by the other party?
19. Right to terminate (can quit without liability)
  - May quit work at any time without incurring liability?

### Employer Responsibilities Tests

20. IC can hire, fire, pay and supervise those from other party
  - Hire, supervise, and pay assistants for the other party?

### Criteria Tool for:

IRS, Gov't Agencies, Judges, Insurance Companies, IC, Forest Industry Companies

- Used to draft legal opinions
- IRS places most weight on criteria 1 - 5