

SELF INSURED MEDICAL REIMBURSEMENT PLAN

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SELF INSURED MEDICAL & DENTAL CHECKLIST

Reimbursement date & amount
Disability reimbursement
Coordination with other insurance
Termination & amendment
Communication

Self Insured Medical Plan

_____ (“Employer”) hereby establishes this Health and Accident Plan, herein after referred to as the “Plan”, for the exclusive benefit of its employees.

Reimbursement for Medical Expenses:

Effective _____ (date), _____ employer (or if a corporation) corporation _____ (name of incorporated) will reimburse at least quarterly to any employee of the employer who is employed by the employer on a (full or part-time basis) all expenses incurred by such employee for medical care (as defined by Section 213(d) of the Internal Revenue Service Code) of such employee, his/her spouse, and his/her dependents (as defined in Section 152 of the Internal Revenue Code).

All full time employees should be covered. A full time employee is one who ordinarily works 25 hours a week or more.

(c) If the employee meets any of the following, he/she will not be covered absent the employers choosing to do so as noted in sub-part (d) below.

Ordinarily work less than 25 hours per week.

Is under age 25.

Ordinarily works less than 7 months.

Works for the employer for less than 3 years.

(d) The employer may, at its option, cover any or all of the normally non-covered employees noted in sub-part (c) above.

Limitations on coverage under this plan (optional). Notwithstanding anything noted in 1 (a)-1(i), this plan will cover the following expenses:

(e) Expenses for Medical Care, as so defined in Section 213 (d), include all amounts paid for hospital bills, doctor & dental bills, drugs and premiums on accident &

health insurance including hospitalization , surgery, routine physical or chiropractic treatments, and over the counter medications designed to treat a diagnosed medical condition. Dependents, as so defined in Section 152, include any member of such employee's family, over one half of whose support is furnished by such employee and the spouse of the employee.

The employer may, in its discretion, pay any or all of the above defined expenses directly in lieu of making reimbursement. In that event, the employer shall be relieved of all further responsibility with respect to that particular medical expense.

The reimbursements to, or for the benefit or behalf of, any one employee, including his/her spouse and dependents, shall be limited to \$ _____ per person.

- (h) Any person hereafter becoming an employee of employer, employed on a full-time basis, shall be eligible for the benefits under the Plan, unless they are disqualified under one of the criteria mentioned in sub-part (c) above.
- (i) Any employee applying for reimbursement under this Plan shall submit to employer, at least quarterly, all hospitalization, doctor, dental, or other medical bills, including premium notices for accident and health insurance; for verification by the employer prior to payment . A failure to comply herewith may, at the discretion of employer, terminate such employee's right to reimbursement.

2. Continuation of Wages During Disability: (OPTIONAL)

Effective _____ (date), if a covered employee who is employed by employer and covered by the Plan should become permanently and totally disabled and retire on account of _____% of disability, the employer will continue the wages of such employee for a period of (month or years) commencing with the month following the month in which such permanent and total disability first occurs. No disability payments shall be made after the death of the employee unless so noted in their employment contract.

The term "Permanent and Total Disability" shall mean the inability to engage in any substantial gainful activity by reason of any medical determinable physical or mental impairment, which is expected to continue for at least 12 months. The employer may request appropriate documentation to substantiate such permanent and total disability. Moreover, such payments shall cease upon the cessation of the disability or the return to work with any employer on "full time" status for a period of at least 2 consecutive months.

Other Insurance:

Reimbursement under this Plan shall be made by the employer only in the event and to the extent that such reimbursement or payment is not provided for under any insurance policy or policies, whether owned by the employer or the employee or under any other health and accident insurance, was a Continuation Plan or Governmental Benefit program. In the event that there is such a policy or plan in effect, providing for reimbursement or payment in whole or in part, then to the extent of the coverage under such policy or plan, the employer shall be relieved of any responsibility hereunder.

Termination and Amendment:

The employer reserves the right to terminate and/or amend this Plan at any time during any year, provided that such termination or amendment is taken by formal director action. The termination or amendment of the Plan shall not affect any right of a participant hereunder to claim reimbursement for medical expenses under the provisions of Section (1) arising prior to such termination or amendment. All employees will be given notice of any termination or amendment no later than sixty (60) days after the effective date of the termination or amendment.

5. Communication:

A copy of this Plan shall be given to all present and future employees of the Employer who are employed on a full-time basis. If an employee has any questions, or needs any additional information regarding this Plan, he/she should contact personnel.

6. Internal Revenue Code Exclusions:

It is the intention of the Employer that all such medical benefits payable under Section (1) of this Plan shall be eligible for exclusion from the gross income of the employees covered by this Plan, as provided in Sections 105 and 106 of the Internal Revenue Code.

Employer	Date
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Employee	Date
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EMPLOYMENT CONTRACT

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For information on workshops call 1-800-874-0829.

Chapter 4 – HIRE AND LEASE FROM RELATIVES

Strategy 1 & 2 (page 57-59)

In hiring any relative there are certain things you need to do:

File SS-4 for Employee ID# to IRS service center near you.

Get state number for withholding .

File with state for worker compensation and unemployment tax.

(Note: In some states spouses and kids are exempt so you need to ask.)

Have a contract of employment with your spouse or kids (See exhibit B).

File appropriate federal forms with IRS (See page 67, strategy A).

Note: Children under 18 are exempt from FICA and unemployment taxes. However, the forms still need to be filled out with the word "exempt" on them. Children under 21, (but 18 or older) are exempt from Federal Unemployment Taxes only.

Strategy 2: Self Insured Medical Reimbursement Plan (page 59).

* See Exhibit D for sample plan*

Warning Note:

If you have any other full time employees you may have to cover

them by the same plan. You can exclude the following however at your option:

- i) Employees with less than 7 months of service
- ii) Employees under age 25
- iii) Employees with less than 3 years of service

Employees who ordinarily work less than 35 hours per week, if the rest of the workers ordinarily work more, there is a safe harbor for those workers who work less than 25 hours per week.

Exhibit B Employment Contract (General)

Checklist:

- * Duties of Employee
- * Compensation
- * Term of Employment
- * When termination of employment can occur by employer
- * When termination of employment can occur by employee
- * Reimbursement for expenses
- * Restrictive covenant
- * Arbitration
- * Notice
- * Assignment
- * Disability
- * Governing Laws
- * Headings
- * Signatures
- * Supper Money
- * Fringe benefits (Insurance, etc.)

Sample Employment Contract (General) with Expense Reimbursement

Agreement dated _____ between _____

(the "Employer") and _____

(the "Employee").

1. **Duties:** The employer hereby employs employee as _____
_____ to perform the following
occupation/title
functions and tasks: _____

The employer may from time to time extend or curtail the employee's precise services.

2. **Term:** The term of this agreement shall begin on _____
Date
And shall terminate on _____.
Date
The employer shall have the right to extend the agreement for an additional
period of _____ years by giving written notice to the employee by no
years
later than _____.
Date

3. **Compensation:** The employer shall pay the employee for services rendered a salary of \$ _____ a year, payable in equal monthly installments at the end of each month. Salary payments shall be subject to withholding and other applicable taxes.

4. **Working facilities:** The employee shall have some office space and other suitable facilities . The office need not be a private space.

5. **Disclosure of Information:** The employee acknowledges that the list

of the employer's customers, is a valuable, special and unique asset of the employer's business. The employee shall not, during and after the term of his employment, disclose any part or all of the employer's customer list to any person, firm, corporation, association or other entity for any reason or purpose. In the event of the employee's breach or threatened breach of this paragraph, the employee shall be entitled to a restraining order and an injunction in order to enjoin the employee from using all or any part of the employer's customer list and from rendering any services, to any person, firm, corporation, association or other entity to whom all or part of such a list has been disclosed or is threatened to be disclosed. In addition to or in lieu of the above, the employer may pursue all other remedies available to the employer for such breach or threatened breach, including the recovery of damages from the employee.

6. **Expenses:** The employee is expected to promote the employer's business as a major part of his/her job duties. Accordingly, the employer's business, including expenses for entertainment, travel, home entertainment, club dues, and similar items. The employer will reimburse the employee for all such expenses upon the employee's periodic presentation of an itemized account of such expenditures.

7. **Vacation:** The employee shall be entitled each year to a vacation of _____ weeks, during which time his compensation shall/shall not be paid. Each vacation shall be taken over a separate period.

8. **Disability:** If the employee is unable to perform his services by reason of illness or incapacity for a period of more than two (2) consecutive weeks, the compensation shall there after be payable to him during the continued period of such illness or incapacity shall be reduced by 25%. The employee's full compensation shall be reinstated upon his return to full employment and discharge of his full duties, notwithstanding anything to the contrary, the employer may terminate this agreement at any time after the employee is absent from his/her employment, for whatever cause, for a continuous period of more than three months, and all obligations of the employer shall thereupon terminate.

9. **Termination Without Cause:** The employer may without cause terminate this agreement at any time by giving two weeks written notice to the employee. In lieu of this, the employer may require immediate discharge of the employee if two weeks severance is paid to the employee. The employee may without cause terminate this agreement by giving sixty (60) days written notice to the employer. In such event, the employee shall continue to render his/her services, and shall be paid the regular compensation up to the due date of termination (but shall not receive any severance).

Termination Upon Sale of Business or Termination of Business:
Notwithstanding anything to the contrary, the employer may terminate this agreement by giving seven (7) days notice to the employee if any of the following occur:

The employer sells substantially all of his assets to

A single purchaser or to a group of associated purchasers.

At least two-thirds of the outstanding corporate shares of the

employer (if incorporated) are sold, exchanged, or otherwise disposed of in a single transaction.

- C) The employer elects to terminate its business or liquidate its assets, or
- D) There is a merger or consolidation of the employer in a transaction in which the employer's shareholders or partners receive less than 50% of the outstanding voting shares of the new company or continuing corporation or entity.
- E) Death of the employer.

11. **Arbitration:** Any controversy to a claim arising out of, or relating to this agreement, or its breach, shall be settled by arbitration in the city of _____ in accordance with the rules of the American Arbitration Association.

12. **Notices:** Any notice required or desired to be given under this

agreement shall be deemed if given in writing and sent by certified mail to the employee's residence or the employer's principal office, as the case maybe.

13. **Waiver or Breach:** The employer's waiver of any provision of this agreement shall not operate or be construed as a waiver of any subsequent breach by the employee. No waiver shall be valid unless in writing and signed by the employer or an authorized officer thereof.

14. **Supper Money:** The employer agrees to pay supper money of \$20.00 and any taxi fares to the employee for each day that the employee is forced to work 10 hours due to the extraordinary demands of the business of the employer. The supper money shall only be paid for the occasional overtime work not to exceed 60 days a calendar year.

15. **Assignment:** The employee acknowledges that his/her services are unique and personal. Accordingly, the employee may not assign his rights or delegate his/her duties or obligations under the agreement. The employer's rights under this agreement shall inure to the benefit of, and is binding upon all successors of the employer and assigns.

16. **Entire Agreement:** This agreement contains the entire understanding of all the parties. It may not be changed orally but only by an agreement in writing signed by all parties.

17. **Headings:** Headings in this agreement are for convenience only and shall not be used to interpret or construe its provisions.

In witness thereof, the parties have executed this agreement on

_____.

Date

(If Corporation)

Employer or President

Corporate Seal Attest

Secretary

Employee

Independent Contractor vs. Employee

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Part I: Overview

Introduction: One of the biggest and thorniest problems facing both businesses and the IRS is whether a worker is an independent contractor or whether they should be classified as an employee.

Sadly, there are few “hard & fast rules” for this determination. It’s mostly one of fact. In addition, The IRS hasn’t helped this situation due to its constantly changing emphasis on different criteria based on every situation.

Strategy 1: Make Your Workers Independent Contractors

Advantages of Independent Contractors

There are numerous advantages to treating a worker as a contractor and not as an employee. Some of these are as follows:

- * No FICA taxes need to be paid by the employer on payments to contractors.
- * No FUTA (& Federal unemployment taxes) need to be paid on contractors.
- * No worker’s compensation need to be paid.
- * No cost of living increases usually occur
- * No overtime & vacation pay need to be made.

- * No fringe benefits need to be paid which could save most employees a bundle.
- * No pension need be given to contractors.
- * The Age Discrimination In Employment Act doesn't apply to contractors.
- * The Americans with Disability Act doesn't apply to contractors.
- * Less scrutiny need be made of contractors under the Immigration Reform & Control Act 1986.
- * The 1986 safety statutes of the Occupational Safety & Health Act do not protect contractors.
- * Reduced responsibility for actions committed by contractors over what the employer is responsible for by employees.
- * Reduced problems with labor laws for contractors.

In short, it is usually much cheaper to use contractors & there is much less legal liabilities associated with them.

Misclassification:

The problem is that the IRS believes that contractors do not report their income as frequently as employees do. In addition, employees have money withheld, but contractors don't. Unfortunately, there are many problems if you guess wrong and unintentionally misclassify (but file form 1099) an employee as a contractor. Some are:

Payment of employee's share & FICA taxes.

Payment of FUTA.

Interest on FICA and an additional ½% per month underpayment penalty.

Penalties for failure to deposit employment taxes. The penalty ranges from 2% - 15% on the undeposited amount depending on the date of deposits.

Penalties to file employment tax returns up to 5% per month.

Trust fund recovery penalty of up to 100% on unpaid employment taxes.

There are some relief provisions from many penalties that will be discussed below. However, even with some relief, they can add up!

Part II: Statutory Contractors and Employees

Statutory Employee Overview

Strategy 2: Avoid hiring statutory employees

There are several occupations that are employees for FICA purposes, but not for income tax.

Who Are Statutory Employees

- * All corporate officers.
- * Any driver engaged in distributing meat, fruit, beverages, other than milk, laundry, or dry cleaning.
- * All full time life insurance agents.
- * Home work where specific spec are given by person for whom work is to be performed, on goods or materials furnished by said person and said goods are to be returned to the principal or their designate.
- * Full time salesman of orders from wholesales, or retailers for hotel operators or restaurants or other similar establishments for Merchandise for products sold for resale or for supplies used in their business for solicitation of orders primarily for one principal employer.

For this to apply, the services must (by contract) be performed personally unless there is substantial investment by the worker in facilities.

Strategy 2A: File as contractors

Tip: Statutory Employees file schedule C and report all business expenses as business expenses & not as itemized deductions.

Investment In Facilities

Investment in facilities means special equipment is used and not equipment commonly provided by employees such as cars.

Strategy 3: Try to Hire Statutory Contractors

Statutory Contractors Overview

There are some workers who are treated as Independent Contractors by statute. The two groups protected by statute are qualifying real estate agents and direct sellers.

Qualifying Real Estate Agents

Qualifying real estate agents (QRA) are protected by statute as independent contractors. However, QRA'S must meet three tests.

- * Must be licensed as a real estate agent or broker.
- * Must have substantially all remuneration based on sales commission rather than hours or weeks worked.
- * All services must be performed pursuant to a written contract.

Note: All real estate services qualify for independent contractor status except management property.^{16A}

Tip for Real Estate Assistants: Assistants can be treated as independent contractors if pay is based on a percentage of commission, there is no hourly or weekly pay, the contract notes that they are an independent contractor and the assistant can work for other companies and work at home at times.

Direct Sellers

Direct sellers are also protected by statute as independent contractors if three tests are met:

- * Must be engaged in the business or selling consumer products door-to-door or at least outside of a retail store. Consumer products constitute tangible personal property used for personal, family or household purposes.
- * Must have substantially all remuneration based on sales commission rather than hours or weeks worked. Substantial here means at least 90%.
- * Must have a written contract noting that they are independent contractors.

Note: Most networks marketers are direct sellers.

Part III: Independent Contractors vs. Employee Criteria

Introduction

Strategy 4: Structure Your Workers In Accord With IRS Rules

So you're not a real estate agent professional and do not direct sell to homes any personal property. In addition, you're not clearly a statutory employee such as a full time Life Insurance Agent. Now what! IRS has published 20 criteria in order to determine when a worker should be classified as an employee or a contractor.

Unfortunately, IRS emphasizes these criteria differently depending on the situation. This results in a lot of confusion. Therefore, the more you can direct the various criteria in your favor, the greater the likelihood that your covered workers will be treated as contractors. Recognizing that these 20 factors are conflicting and have resulted in differing court opinions, the IRS has reclassified these into three main categories.

- * Behavioral Control: What are the instructions given or taken and what training is provided?
- * Are there any financial controls over the worker?
- * Is there a true independent contractor relationship?

Although, these 20 criteria have been somewhat reclassified into three factors, mostly the same criteria are applicable. As you can see, some factors are being de-emphasized. However, if possible, I would still adhere to the criteria noted below, especially for those criteria that are not being de-emphasized by the IRS.

The IRS Criteria

Strategy 5: Don't Give Detailed Instructions

The key behind winning as a contractor is that contracts should determine the result of a job. Companies should only be concerned with the result of the job, not how it should be accomplished. Thus, the more detailed the instructions, the more likely IRS will classify a worker as an employee. Instructions should be minimal and general in nature.

Strategy 6: Don't Provide In-Depth Training

Training is not normally given to contractors other than to familiarize them with company policies or give a basic mention to the business or results to be accomplished. You should rarely, if ever, require an experienced worker to work with a new contractor or to train them. You also should not have required meetings that contractors must attend.

Tip: Informal meeting or working with other workers may be allowed but not required.

Strategy 7: Limit Contractors Integration Into The Business

All contractors must achieve some business integration. As such, this factor is not controlling. However, the less required integration, the better. Thus, it would be ideal to have a contractor not work set hours, but select their own schedule, not to have close supervision and not be paid by the hour or the week. Do not have contractors abide by an “employee manual”. A separate “Contractor’s Manual” should be prepared. In addition, contractors should not be required (unless for safety) to wear uniforms.

Strategy 8: Do Not Require That Services Be Rendered Personally

This is one of the more important factors that IRS looks at. When firms hire contractors, they are concerned with the result of the job not who does it. Contractors should have the right to designate who shall perform the services in their agreement.

Strategy 9: Allow Your Contractors To Hire And Pay Assistants

Contractors can usually hire assistant at their whim. They also pay them.

Strategy 10: Put A Limit On Your Contractors Continuing Relationship

This factor is also not, in itself, controlling. The key here is to have the contractor’s agreement terminated after some time period with the option to renew. It should not be indefinite.

Strategy 11: Do Not Set A Number Of Hours To Work Weekly

Contractors are only required to fulfill some end result. Employees are required to work a set number of hours. It is best not to require contractors to put in a set number of hours. Contractors should set their own hours within limits. Note: Although I would still adhere to this strategy, it is being de-emphasized by the IRS.

Strategy 12: Try Not To Require Contractors To Work Full-Time

Although this factor is also not controlling, you should not require contractor to work full time. Full time status is indicative of too much control. Any contract should provide that they could work elsewhere. If your contractors do, you should clearly document this fact. Note: This factor is being de-emphasized by the IRS.

Strategy 13: Allow Workers To Work Off Your Premises

This factor is also not determinative since many contractors; perform work at an employer’s

premises. However, if the work can be done properly elsewhere, it is usually wiser to allow such work to be done outside the location of the principal. As with all the strategies, this should be noted in their independent contractor's agreement.

Strategy 14: Do Not Set Order & Sequence Of Work

It is important that a principal should not direct the order of how the work is to be performed or provided a detailed sequence of the work. No set hours should be required weekly. You should only be concerned with the end result as long as it is completed within the time frame specified in the written agreement. Note: This factor has been de-emphasized in recent years.

Strategy 15: Do Not Pay By The Hour, Or Week

This factor is not determinative alone since many professional contractors such as lawyers and doctors are paid by the hour. However, it would be safer to avoid hourly or weekly pay and avoid all "draws". Payment by commission by completion of a job is the better method. In addition, avoid giving the contractors any fringe benefits.

Strategy 16: Avoid Payment Of Business And/Or Travel Expenses

This factor also is not that controlling. However, it is safer to either have the contractor pay his/her own expenses and to bill the company or to raise the amount of total pay where should encompass the expense. This certainly includes training or continuing education course.

Strategy 17: Avoid Furnishing Tools & Equipment For Contractors

The more equipment furnished by the company, the less likelihood that the contractor will be an independent contractor. You should document any tools, equipment or materials furnished by the contractor.

Strategy 18: Have Contractors Incur Significant Investment In Equipment & Facilities

All contractors should be required to use as much documented equipment as possible. (i.e. desks, chairs, file cabinets, etc. can be useful)

Strategy 19: Mandate A Desk Fee Or Equipment Usage Fee

Many Mortgage brokers have been required to treat their workers as employees. However, they should be able to get around this requirement by mandating a reasonable fee for all equipment used and slightly increasing the commission payout to help offset the fee.

Strategy 20: Require All Contractors To Realize A Profit Or Loss

Without question, this has shown to be a very important criteria to IRS on audits. The work must have a real “risk of loss”. It is vital to document how a contractor can have a loss if they don’t achieve the sales or do the job correctly.

Documentation Tip: Losses can result from incurring rent, mailing costs, travel, desk fees, advertising, etc; especially where there is little guaranteed income to offset these expenses.

Strategy 21: Allow Contractors To Work For More Than One Firm

Although it is not required that contractors work for several firms, it is helpful if it occurs. At the least, all contracts should provide that workers have the unconditional right to accept work from other companies.

Strategy 22: Allow Contractors To Make Their Services Available To The Public

It is helpful for contractors to advertise their business, have listings in business directories and telephone directories. If they have a rented office, this is particularly useful in meeting these criteria.

Strategy 23: Do Not Allow An Unfettered Right To Discharge Contractors

Most Independent Contractors cannot be fired at the whim of a company, so long as the worker achieves a certain result or goal. All contracts should note this limitation.

Strategy 24: Do Not Allow The Contractor An Unfettered Right To Quit

Contractors usually cannot terminate at will until a project is completed. All independent contractor agreements should provide limits when a contractor may terminate their services. It should usually be based on a time frame, end of a project, completion of some result or failure to achieve contract results.

Strategy 25: When In Dispute, Litigate

Generally, court decisions have been much more lenient than that of the IRS. Isn’t that a surprise?

Thus in Rasburg, the court relied on four criteria:

Industry practice or custom in area of parties (They got documentation from similar firms).
Intent of parties.

Whether there was a signed independent contractors agreement.

Whether employee type benefits were available.

Tip: Certainly, at least, these four criteria should be considered in dealing with contractor agreements.

Strategy 26: Structure Insurance Agents As Independent Contractors

The courts have treated insurance agents leniently. In the famous case of Dan P. Butts, the Tax Court & Appellate Court treated him as an independent contractor despite his company treatment as an employee.

The facts are that Allstate treated Butts as an employee. He had to devote all his business time to only selling Allstate products and could not sell insurance for any other company without Allstate's approval. He was paid solely on commission and provided his own office expenses, but Allstate did help him a little on the expenses with an allowance. Despite Allstate giving him fringe benefits, vacation days, 401K coverage, and Errors and Omissions Insurance, he was still held to be an independent contractor.

Key: Here Butts personally controlled most of his business expenses and had the risk loss from his business. He also had a great deal of control in operating and running his business and couldn't be terminated unless he received a prior notice of unsatisfactory work.

Strategy 27: Get An IRS Ruling

If you feel that you meet most of the independent contractor criteria, you may wish to seek a ruling from IRS. This will bind the IRS and prevent any future penalties. To obtain a ruling, you need to file IRS form SS-8 with the District Director in charge of your district. Even better, there is no IRS fee for this evaluation. A copy of form SS-8 is included at the end.

Strategy 28: Get Your Employees To Back Up Form SS-8

IRS checks with all employees noted on the SS-8 as to whether your statements are correct. It is wise to give a sample of your form SS-8 so their answers compare favorably.

Note: A ruling can be gotten for a class of employee. Any employee in the same class with the same contract will be covered. Thus, only mention a couple of workers in your form SS-8 filing. It will make your life less taxing.

Part IV: Relief From Penalties

Strategy 29: Use Sec 530 To Get Relief From Penalties

If IRS reclassifies your workers as employees, you need not go on extended vacation to avoid the penalties. Congress has provided some relief for companies entitled section 530 to relief. This relief applies only to all employment taxes and penalties. In addition, the IRS now has the burden of showing that the relief provisions of section 530 do not apply to you. In addition, IRS notes that Sec 530 should be constructed most favorably in favor of you, the taxpayer.

Observation: Take advantage of it!

Qualifying For Sec 530 Status

Sec 530 has 3 safe harbors that allow its relief. If you meet any of the three, you qualify.

Strategy 30: Relief On Prior Employment Tax Audit

If there was a case or IRS ruling on point or you received a private ruling from the IRS, this will constitute a reasonable basis for the relief of Sec 530.

Tip: Since a prior ruling given to you protects you, seek an IRS ruling if you think your case is good.

Strategy 31: Rely On A Prior Employment Tax Audit

If you have been audited for employment taxes, and no change or reclassification of your contractors have not occurred, you can utilize the relief of Sec 530. This, obviously, is more risky & is not a recommended approach.

Strategy 32: Rely On An Established Industry Practice

If you can show that a significant segment of your industry treats similar workers as contractors, you can get Sec 530 relief. As recently amended, a significant segment can be as little as 25% of similar businesses. You can ordinarily use your own geographical area as the reference point unless there are far too similar businesses; In which case, you need to test business by a regional analysis.

Observation: It is important to contact other similar companies such as yours and ask (in writing) whether similar workers (as yours) are treated as employees or contractors for this exception to apply. Unless you are in real estate, this should probably always be attempted.

Strategy 33: Be Consistent In Treating Workers As Contractors

As an additional requirement to qualify under Sec 540, you must treat any contractors as contractors. This means filing the appropriate forms (i.e. IRS form 1099). Do not file from W-2 or you will never be able to use Sec 530 relief for these workers. Thus, if you treat a worker as part contractor and part employee, you may taint that worker for Sec 530 relief.

Strategy 34: Watch Out When Dealing With Certain Technical Workers

There are some types of workers who may not be allowed any Sec 530 relief.

Such as:

- * Designers
- * Engineers
- * Drafters
- * Computer programmers
- * System analysts
- * Other similar workers

Tip: You may still treat these workers as contractors, but if you wrongly classify them as such, you can't set section 530 relief from penalties. Therefore, getting an IRS ruling here wouldn't be very beneficial.

Strategy 1: Make your workers independent contractors.

Strategy 2: Avoid hiring statutory employees.

Strategy 2A: Statutory Employees still file their tax returns as contractors.

Strategy 3: Try to hire statutory contractors.

Strategy 4: Structure your workers in accordance with IRS rules.

Strategy 5: Don't give up detailed instructions.

Strategy 6: Don't be a "control freak."

Strategy 7: Limit a worker's integration into business.

Strategy 8: Do not require that the services be rendered personally.

Strategy 9: Allow all contract workers in their agreements to hire and pay assistants.

Strategy 10: Put limits on your workers' continuing relationship.

Strategy 11: Do not set a number of hours to work weekly.

Strategy 12: Try not to require a full time status.

Strategy 13: Allow workers to work off your premises.

Strategy 14: Do not set any detailed order or sequence of work.

Strategy 15: Do not pay a worker by the hour or by the week.

Strategy 16: Avoid payment of business and/or travel expenses.

Strategy 17: Avoid furnishing tools & equipment.

Strategy 18: Have workers incur significant investments in equipment and facilities.

Strategy 19: Require a desk fee or office fee.

Strategy 20: Structure all compensation so workers can realize a profit or loss.
Strategy 21: Allow workers to work for more than one firm.
Strategy 22: Allow workers to make their services available to the public.
Strategy 23: Do not be able to fire contractors for no reason.
Strategy 24: Do not allow contractors to quit without some limitations.
Strategy 25: When in dispute with IRS – Litigate.
Strategy 26: Structure insurance agents as contractors.
Strategy 27: Get an IRS ruling, if you believe you have a strong case.
Strategy 28: Get your employees to substantiate your IRS form SS-8.
Strategy 29: Use section 530 to get relief from penalties.
Strategy 30: Rely on prior judicial or IRS rulings.
Strategy 31: Rely on a prior employment tax audit.
Strategy 32: Rely on an established industry practice.
Strategy 33: Be consistent in treating contractors as contractors.
Strategy 34: Watch out when dealing with certain technical workers.

P9-8

PAGE 3

PAGE 1

§ 1404
§ 3301 of the Internal Revenue Code (IRC); § 31.3301-1 of the Income Tax Regulation (ITR).
29 USC § 621-634
Publ No. 101-336. 101st Cong, 2nd Sess, 104 Stat 327, (1990)
8 USC § 1324 (a) (b)

§ 6601, 6621
 § 6661 – 6664 of the Internal Revenue Code
 § 6656 (b) (1)
 § 6651 (a) (11); 6651 (a) (12)
 § 6672
 Rul 90-23, 1990-2 CB, 33
 Sec 3121 (d) of the Internal Revenue Code
 § 3121 (d) (3) of the Internal Revenue Code
 § 31.3121 (d)-1 (d) (3) (ii) of the regulation
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 § 3508 of the Internal Revenue Code
 § 31.3121 (1) (d) (1) of the regulations
 Rev Rul 87-41, 1987-1 C.B. 296
Dan Butts, TC Memo, 1993-478, Aff'd, 49 F 3rd 713; A Wayne Smithwick, TC Memo 1993-582
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 Sec 530 (a) (2) (c)
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 Rev. Proc. 85-18, 1985-1 CB 518, Dr. Jonathon Nash vs. US., 76 AFTR 2d 95-7920 (1995)
 Sec 530 (d)

NOTE: The following form is for illustration only. Always have your Lawyer tailor the appropriate form for your situation.