

Legally Speaking

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Previously in this column this writer reported that there is a nationwide attack on independent contractor status. It continues unabated. At this time I am handling cases in Washington State, Oregon, California, and Ohio.

Now is the time to conduct a complete independent contractor audit. That audit should include a review of your written independent contractor agreement. Based upon case law, the following list is clauses that should be present in every written agreement:

1. **Preamble** – A clause that states that the Company is a publishing and manufacturing business and that the contractor is in the distribution business;
2. **Intent** – A paragraph that clearly states Independent contractor status/expression of intent;
3. **Route/ Territory** – Negotiated geographic area of distribution;
4. **Negotiated Rates** – Negotiated purchase terms/contract fees for each publication to be delivered by contractor;
5. **Contractor Payment** – Agreed upon payment date for Contractor;
6. **Bonding** – A clause that provides for a bonding requirement/insurance bond;
7. **Papers Pick-up Point** – Agreed upon location for contractor to pick up newspapers;
8. **Delivery deadline** – A delivery deadline is independent contractor friendly;
9. **Billing/payment dispute resolution mechanism** – A clause that states that contractor must raise a payment dispute within a time limit or the issue is waived;
10. **Risk of loss** – The contractor should have the risk of loss of lost, damaged papers. Contractor should have some risk of loss in the buy/sell relationship;
11. **Complaint Delivery** – Negotiated delivery complaint fee, payable by contractor;
12. **No agency language** – Make clear that contractor is not an agent of the Publishing Company;

13. **No Benefits** – A paragraph excluding contractor from Company employee benefits;
14. **Vehicles/Expenses/Insurance** – Vehicle/insurance paragraph that makes clear that contractor provides vehicle and pays all expenses for it; is responsible for all insurance;
15. **Unemployment/Workers Comp** – Express language, in bold type, communicating ineligibility for unemployment and workers compensation benefits;
16. **Indemnification** – Indemnification paragraphs, including indemnification concerning contractor telemarketing efforts;
17. **Taxes** – Taxes/licenses paragraph, including reference to Direct seller provision of the Internal Revenue Service. It is critical to provide that the contractor is responsible to pay taxes;
18. **Product integrity** – It is critical to provide that the Publisher controls the content of the product and to provide that the contractor may not insert foreign material into the product;
19. **Negotiated performance standards** – If you provide for performance standards, independent contractor status is enhanced if they are negotiated;
20. **Integration** – A complete agreement/changes provision; it is important that the agreement provide that it is the complete agreement and that any changes must be in writing, signed by both parties;
21. **Contract duration** – The written agreement should have a definite expiration date and not be automatically renewable;
22. **Termination rights of contractor and Company** – It is important that both parties have equal rights of termination. In the “without cause” context, both parties should be required to give the other party at least 30 days advanced written notice of termination;
23. **Contractor’s Signature** – Bold signature block language where contractor acknowledges independent contractor status, the contract’s negotiability, and ability to read and understand the English language;
24. **Compliance with Law** – The contract should include a paragraph that obligates the contractor to comply with all state, federal and local laws, including child labor laws.