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ATTORNEYS AT LAW

Following up on a prior tip regarding the Legal Arizona Workers Act that requires employers to electronically verify the ability of any newly-hired employees to work in the United States, it is important to distinguish between employees and independent contractors. An association is only affected by the new law if it has employees. An “employee” is defined in the Legal Arizona Workers Act as “any person who performs employment services for an employer pursuant to an employment relationship between the employee and employer.” This definition is of little help by itself, but the term is defined in other provisions of Arizona law.

A.R.S. § 23-613.01 defines an “employee” in the context of unemployment benefits as “any individual who performs services . . . and who is subject to the direction, rule or control . . . as to both the method of performing or executing the services and the result to be effected or accomplished.” So where an individual has both their methods and results directed by a business, they may be an employee of that business. Excluded from this definition is any “individual who performs services as an independent contractor, business person, agent or consultant, or in a capacity characteristic of an independent profession, trade, skill or occupation.” So independent contractors are not employees.

A.R.S. § 23-902 provides a list of indications that an individual is acting as an independent contractor for a business in the context of workers’ compensation benefits. The list includes:

- The individual does not perform work exclusively for the business.
- The business does not provide the individual with any business registrations or licenses required to perform the services to be provided.
- The individual is paid an amount fixed by contract as opposed to a salary or an hourly rate.
- The individual will provide services until the expiration of a contract unless a breach of that contract occurs.
- The business does not provide tools to the individual.

Thus, a vendor who has their own business providing services to a variety of clients and provides services to an association under a contract will typically be considered an independent contractor rather than an employee of that association.

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