

TESTIMONY IN SUPPORT OF SB 197

Home Care of Baltimore has been providing care for elderly Medicaid recipients for 13 years and has witnessed various trends in employment laws during this time. We initially structured our company as 1099, and we faced challenges with Unemployment, the Labor Department, and other regulatory bodies.

Some companies wrongly think that if a company pays Unemployment and Working compensation, they could consider workers as contractors that it is incorrect. A question arises: if you hire roofers or landscapers, do you pay them overtime or unemployment?

According to the IRS, labor, and unemployment departments, our caregivers should not consider an independent contractor. If the services performed can be controlled by an employer (defining what will be done and how it will be done). This holds true even if the worker is granted freedom of action. What matters is that the employer has the legal right and obligation to control the details of how the services are performed, as required by Comar 10.07.05.

Many employers commonly refer to independent contractors as "1099" and employees as "W-2" workers, based on the IRS forms used for reporting purposes. However, it's essential to note that simply providing a worker with a 1099 Form does not automatically classify them as an independent contractor. The classification must always be based on whether the worker meets federal and state tests for independent contractor status. Different tests are utilized to determine whether a worker is covered by a particular law or benefit.

Under federal nondiscrimination laws, a worker is presumed to be an employee.

- " The employer has the right to control when, where, and how the worker performs the job.
- " The work doesn't require a high level of skill or expertise.
- " The employer furnishes the tools, materials, and equipment.
- " The work is performed on the employer's premises.
- " There is a continuing relationship between the worker and the employer.
- " The employer has the right to assign additional projects to the worker.
- " The employer sets the hours of work and the duration of the job.
- " The worker is paid by the hour, week, or month rather than the agreed cost of performing a particular job.
- " The worker does not hire and pay assistants.
- " The work performed by the worker is part of the regular business of the employer.
- " The worker is not engaged in their own distinct occupation or business.
- " The employer provides the worker with benefits such as insurance, leave, or workers' compensation.
- " The worker is considered an employee of the employer for tax purposes (i.e., the employer withholds federal, state, and Social Security taxes).
- " The employer can discharge the worker.

Correct classification of workers is a sound fiscal policy and helps families, businesses, and our state.

Home care workers who provide care under Medicaid programs should be properly classified as employees and not misclassified as independent contractors.

Several years ago, before we voluntarily changed our caregivers from contractors to employees we had audited and paid a lot of money because we had not properly classified our workers.

I had many meetings with different lawyers, and everyone said that they could not defend us.

While it may cost money to ask a lawyer about RSA's worker classification policies, a labor investigation or a lawsuit could cost much more.

We participated in the Voluntary Classification Settlement Program (VCSP), an optional initiative allowing taxpayers to reclassify their workers as employees for future tax periods. This provides partial relief from federal employment taxes for eligible taxpayers who agree to prospectively treat their workers as employees.

Some persons who oppose the Bill saying that "We strongly believe this is a mistake that could lead to much lower caregiver shortages for our already underserved community"

But it is wrong, we did it and we survived, it only hurt owners of the companies financially, decreased their profit.

If contractors become employees, the company has to pay 50% of employees Social Security and Medicare, but it makes employees pay 50% less to Social Security and Medicare taxes.

Also, the company must pay (not voluntarily, but mandatory) Unemployment and working compensation Insurances.

The company has to offer and pay other benefits such as Health Insurance and Sick/Vocation time.

My company is paying the same rate to our Employees as other paying to Contractor, yes, it is much less profitable, but we follow the law.

Changing the classification of your RSA's PCAs from independent contractors to employees is the best way to protect our business and to make sure your RSA follows the law.

I am confident SB197 as presented will ensure home care workers can comfortably continue providing quality in-home care.

We strongly believe that this is the correct path for the RSA.

Thank you for your consideration.

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Home Care of Baltimore

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