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It's Academic?

SAN FRANCISCO STATE UNIVERSITY officials are refusing comment about revelations that John DeCecco, a popular psychology teacher, serves as an adviser to a Dutch magazine that advocates sex with children.

The campus paper, the Golden Gater, broke the story last week that DeCecco sits on the editorial board of Paidika,



The Journal of Paedophilia — a small, Amsterdam-based, avowedly pro-pedophilia magazine with a scholarly bent. DeCecco told NEWSWEEK pedophilia is "not intrinsically" wrong, and that U.S. views are skewed by cases of adults preying on children: "Are we going to let the sickos run society? Are we going to deny children, and adults, freedom to enjoy in life what could benefit them?" He says his interest in the journal is purely academic.

GREGORY CERIO and
LUCY HOWARD with bureau reports

Get to know IRS' independent contractor rules

Money Management

One of the Internal Revenue Service's pet peeves is misclassification of employees as independent contractors. That's because employment taxes are the federal government's cash cow; it is estimated that Uncle Sam has lost as much as \$20 billion in tax revenues as a result of independent-contractor status being claimed incorrectly.

To prevent the loss of valuable tax dollars, the government imposes severe penalties on those who misclassify. Therefore, says the Kentucky Society of Certified Public Accountants, be forewarned. Make sure you understand how the IRS determines whether a worker is an employee or an outside contractor, and follow its guidance carefully.

Misclassification is costly

If the IRS decides that your independent contractor is really an employee under the tax laws, assessments include the federal income tax, as well as Social Security, Medicare and federal unemployment taxes, that should have been paid all along, in addition to interest and penalties.

And should the business prove unable to pay the assessment, "responsible persons" — including corporate officers and shareholders — can be held personally liable. Keep in mind, too, that when you are required to reclassify an independent contractor as an employee, you can face consequences in the area of employee benefits.

IRS' determining factors

There are 20 different factors the IRS uses to determine whether a worker is an independent contractor or an employee. Generally speaking, the more control an employer exerts, the more likely it is that the IRS will consider that person an employee. For example, the government will likely view your independent contractor as an employee if:

- Your company controls the job by instructing when, where and how it is performed.

- Your company provides the tools and materials.

- The independent contractor can't produce evidence of any significant investment of time or money spent setting up a business.

- Your company pays the person at regular intervals — hourly, weekly or monthly.

- The independent contractor cannot directly realize a profit or suffer a loss as a result of his or her services.

Protecting yourself

If your company is using independent contractors, there are several things you can do to minimize your exposure to employee reclassification, with all its resulting assessments. First, prepare written independent contractor agreements that clearly describe the terms of the arrangements. Within these agreements, address as many of the IRS's 20 worker classification factors as possible.

Because you want to illustrate that the independent contractor is not subject to the same control you would have over an employee, your written agreement also should include a provision requiring the contractor to have responsibility for hiring, firing and directly compensating his or her workers. Your contract also should require the contractor to

provide all necessary tools and equipment. You also might include a clause in your agreement stating that you have no intention of retaining the contractor for long-term employment.

In terms of your working relationship, instructions given to independent contractors about when, where, how and in what sequence to perform the job should be general in nature.

Whenever possible, any necessary instructions should be given as recommendations, not mandates.

Have the independent contractors submit invoices to the company for payment and then keep copies of these invoices on file. It's also important that you not assume responsibility for paying the contractor's business or travel expenses or provide health benefits of any kind.

How you're protected

Determining a worker's status can be somewhat arbitrary — and the consequences of misclassification potentially devastating, particularly for a small business. As a result, Congress enacted Internal Revenue Code Section 530 to preclude the IRS from penalizing for erroneous classifications as long as the employer consistently and in good faith classified them as independent contractors. To qualify for Section 530, you must have:

- Not treated the worker as an employee in the past.

- Consistently treated the worker as an independent contractor on all returns filed (including Form 1099).

- A reasonable basis (reliance on authority, prior IRS audit or a long-standing industry practice) for treating the worker as an independent contractor.

- Not treated anyone else holding a substantially similar position as an employee.

One more place to turn

The IRS offers a program called the Classification Settlement Program to help businesses and IRS examiners resolve worker classification issues as soon as a dispute occurs and to ensure that Section 530 relief is properly applied. Examiners are authorized to offer settlements to qualifying businesses. To avoid finding yourself in this situation, CPAs point out that it's best to check annually the extent to which your independent contractors continue to meet IRS requirements as specified in Revenue Ruling 87-41.