

For helping us develop this quiz, special thanks to Andrew Schultz, president of PrO Unlimited, which helps companies address contingent-workforce compliance issues.



QUIZ

Test Your Contractor IQ

Is your company incorrectly treating employees as contractors? Take our quiz and test your knowledge of the rules.

FEDEX IS CURRENTLY facing a class-action lawsuit by drivers who say that while they are paid (and taxed) as contractors, they really function as employees. They are demanding the rights and benefits of regular employees. So far, one California court has agreed with workers, and if FedEx eventually loses the class-action suit, it could owe more than \$1 billion in compensation and taxes. Companies that treat independent contractors as employees could face similar suits and IRS inquiries. Does your company face such a risk? Take our quiz and find out.

- 1] Requiring your independent contractors to incorporate will eliminate your audit exposure. **TRUE/FALSE**
- 2] When workers are determined to be misclassified, the company receiving services can not only be held liable for the taxes they should have paid, but for taxes they should have withheld on behalf of the worker. **TRUE/FALSE**
- 3] IRS guidelines specifically forbid retirees from returning to their former employers as independent contractors. **TRUE/FALSE**
- 4] Instituting and strictly abiding by a 120-day length-of-stay policy for all independent contractors will insulate your company from exposure. **TRUE/FALSE**
- 5] Based on Section 302 of Sarbanes-Oxley, officers could be held personally liable for misclassifying independent contractors. **TRUE/FALSE**
- 6] If my independent contractor says he or she wants to be paid on a 1099-basis, signs a contract to that effect, and declines benefits, I am not at risk. **TRUE/FALSE**
- 7] The majority of states use the IRS "Twenty Questions" guide as their main criteria for determining independent-contractor vs. employee status. **TRUE/FALSE**
- 8] The IRS recently estimated that in one year— 2001—sole proprietors failed to pay _____ in taxes they owed.
A. \$81 MILLION B. \$7 BILLION C. \$21 BILLION D. \$81 BILLION

ANSWERS

1. False. While incorporation is recommended in most cases, the taxing authorities will often look further into the actual relationship that exists.
2. True. Companies are liable for taxes they should have withheld on behalf of a misclassified worker.
3. False. Nothing in the regulations specifically forbids retirees from returning, though the control-factor tests used by the IRS make it nearly impossible and a very dangerous practice.
4. False. Independent contractors who work even one day for your company could be determined to be employees.
5. True. Section 302 of the Sarbanes-Oxley Act requires finance officers to certify financial disclosures. Knowingly certifying false disclosures, including the misclassification of workers as independent contractors, could lead to liabilities.
6. False. A contract with an individual is not a good determination of worker status as an independent contractor or an employee.
7. False. While some states use the IRS "Twenty Questions" guide, most use some form of the "ABC Test," which is generally considered tougher to pass as an independent contractor.
8. \$81 billion.

GRADE YOURSELF

- 8 CORRECT • No worries, take a vacation.
5-7 CORRECT • Good job, but take a closer look at your independent-contractor policies.
3-4 CORRECT • The tax man cometh.
0-2 CORRECT • Press your suit. You'll need it in court.