

# Am I Properly Classifying Employees?

Grand Rapids Employment Law Conference

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# INTRODUCTION

- Proper classification of workers is essential
- Federal and state agencies cracking down on misclassifications
  - Independent Contractor versus Employee
  - Intern versus Employee
  - Exempt versus Non-Exempt
- This workshop teaches the factors and analysis for proper classifications

# SCENARIO I

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## Scenario I

Startup Company was recently purchased by a private equity group that believes that Startup's product has real potential for explosive growth over the next several years. The private equity group is willing to provide the financial capital for this accelerated growth opportunity, but does not want to be involved in the day-to-day management of Startup. The private equity investors, however, have asked the executive leadership team to develop a five year strategic plan for successfully navigating this growth opportunity. The executive leadership team does not believe that it has the internal experience and expertise to develop this strategic plan and decides to hire someone with experience to help with the development of this strategic plan.

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## Scenario I (cont.)

The person hired to facilitate the development of the strategic plan will be paid \$2,500 per month, will have an assigned office at Startup, and will be expected to work at least 40 hours a week on behalf of Startup. The person is expected to be engaged by Startup only for the next 12 months and will not be reimbursed for any related business expenses. The person to be hired is a former Chief Operating Officer who left her position at another local business approximately two years ago. While continuing to look for a new, full-time employment opportunity, the former COO has been doing some consulting work from time-to-time as opportunities arise. Most of these consulting opportunities have come to her attention through word of mouth. Startup would like to know whether this person can be engaged as an independent contractor rather than a W2 employee. What do you think?

# SCENARIO II

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## Scenario II

Cameron is a full-time student at Kettering University, an engineering school. Kettering has a year-round academic calendar which includes two formal eleven-week co-op terms each year during which students can “work” at a real company and get some practical engineering experience. Kettering requires students to complete at least seven (7) co-op terms for which they are evaluated and receive credit towards graduation.

Students have to apply and interview for the co-op opportunities. The interns work under the direct supervision of one or more engineers at the designated employer. They are given engineering assignments, the results of which are then reviewed and approved by the supervisor(s). The sponsoring employers also provide the interns with coaching, mentoring and on-the-job learning opportunities. Companies seek these interns because providing these co-op opportunities helps them recruit new engineers for jobs after graduation. Some productive work is done by the interns, but interns do not displace, nor are they substitutes for, regular employees.

A company would like to participate in offering co-op opportunities to Kettering students. The Company would like to know, however, whether the interns must be treated as employees under federal and Michigan wage and hour laws.

# SCENARIO III

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## Scenario III

The President and CEO of Dudley Do-Good Company is a strong believer in giving back to the local community. Each spring, the Company partners with Habitat for Humanity to build one home for a local family in need. In January each year, the Company has a big kick-off event during which the President and CEO stands before all employees and strongly encourages all employees to volunteer their time to help make this current year's build project a success. Volunteer tasks include making contacts for donations of building materials, fund-raising events and ultimately the actual building of the home. Employees are permitted, but not required, to make calls to solicit building materials during the normal work hours of the day. Planning for the fund-raising events also happens during scheduled meetings held during the work day, but the actual fund-raisers are held on weekends and not during anyone's work time. The building of the home happens both during and outside the normal work hours of the day.

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## Scenario III (cont.)

This is a small Company. The President and CEO knows all employees by name. This is the President's "pet" charity; and, she sits on the local Habitat for Humanity Board. The President has instructed the HR Director to ask all candidates in employment interviews whether they would, if hired, support the Company's Habitat for Humanity effort by volunteering each year. However, the President and CEO has stated that irrespective of the candidate's answer, the HR Manager should hire the best overall candidate for each open position. No one has ever been disciplined for not volunteering; however, the President and CEO has been known to kiddingly "needle" some of the employees who have not volunteered. The HR Manager would like to know whether the volunteer time is truly unpaid volunteer time or is time that must be counted as work time under wage and hour laws.

# SCENARIO IV

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## Scenario IV

Automation Station Company has a group of five customer service employees who receive phone calls from customers with complaints. All five employees have completed extensive training regarding the Company's complex, sophisticated products and are authorized to help customers troubleshoot problems pertaining to the assembly and use of these products. Ultimately, if the problem cannot be resolved by phone, the customer service representative escalates the matter to a higher level who will then contact and deal with the customer. The customer service employees are all classified as exempt and are paid a salary of at least \$455 per week. One customer service representative would like to work part-time. The HR Manager is willing to accommodate the part-time schedule, but is unsure how to handle the weekly salary since the pro-rated salary will fall below \$455 per week. What are the potential problems and solutions?

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THANK YOU!



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Note: This document is not intended to give legal advice. It is comprised of general information. Employees facing specific issues should seek the assistance of an attorney.

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