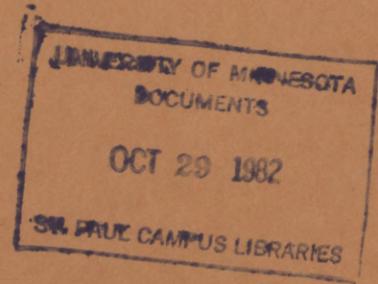


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Employer Obligations in the Logging Industry

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ACKNOWLEDGMENTS

The following material has been prepared in response to a need in the logging industry.

When one considers the complexity of the problems involved and the various ways individuals approach these problems, it becomes extremely difficult to forecast what uniform approach is best.

The attempt here has been to give some general background and information on the law, and then to develop four separate contracts for practical use. It is intended that those contracts should be reviewed and used with care,

depending on the particular situation, and should not simply be adopted without considering the impacts of the agreements and the facts being dealt with. It is especially critical that those who use the contracts follow the contracts' terms, because these agreements will be of no effect if their provisions are not adhered to in practice.

Special credit and recognition is due Russ Allen, executive secretary of the Minnesota Timber Producers Association; Jack Cedergren and Robert Hagman. These individuals have shared in the review of the materials.

EMPLOYER OBLIGATIONS IN THE LOGGING INDUSTRY

A. Scott Reed, Daniel H. Mundt, and Gregory L. Thompson*

I. INTRODUCTION

The question of whether an individual is considered an independent contractor or an employee for purposes of income tax, workers' compensation insurance, unemployment compensation taxes, social security taxes, and labor relations matters continues to plague the logging industry. This confusion is highly understandable, as the courts have never really established a hard line test to be used in resolving all such disputes.

Many articles and other printed information have been published in efforts to clarify. Much of this information, however, has been published piecemeal with the discussion limited solely to either income tax, workers' compensation, unemployment compensation, social security, or labor matters. This piecemeal information from a variety of sources has frequently served to further confuse.

This publication is an effort to tie the areas of income tax, workers' compensation, unemployment compensation, social security, and labor relations together for purposes of setting out the standards that a court might use in each situation in determining whether an individual is actually an employee or an independent contractor. This focus will consider the consistent standards that the courts have used in determining who is an independent contractor and who is an employee for each of the situations listed. The focus naturally, will be on our prognosis of what the Minnesota Supreme Court would use as a test in each of the situations.

The objective of this publication is to establish a framework so each company, dealer, or producer can have an idea of exactly what obligation is owed and where the liability will rest in the various described situations. It should be emphasized that although the legal guidelines and standards set out here are relevant to any situation involving a company, dealer, or producer, this publication and the attached contracts are aimed particularly at the individual loggers who need to be informed about their legal obligations as potential employers.

The ideas, theories, and law set forth here should be evaluated carefully and used in conjunction with the attached independent contractor agreements. We obviously cannot guarantee that the independent contractor agreements will protect a contracting company in all instances, especially with respect to workers' compensation, but if used on a regular basis, we believe that the agreements will permit the parties to understand exactly

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what their responsibilities and obligations are under the law as employers. We specifically refer to workers' compensation, because as you will see, the standards employed by the courts appear to be different for each of the situations.

II. GENERAL BACKGROUND OF PROBLEM

The federal government and the states have passed legislation designed to protect workers and to provide for financial benefits if they become disabled, unemployed, or retired. The responsibility for compliance with these laws is placed on the employer. The obvious question then is, who is considered an employer, or who is an employee?

For various reasons, the problem of who is considered an employer or an employee seems to have been magnified in the forest industry. The problem arises because of different contractual arrangements made between the companies, dealers, and the producers in obtaining timber products. The consistent inquiry is when is a producer or other individual who has sub-contracted to harvest timber considered an independent contractor and in what situations would that individual be considered an employee?

The question is a significant one, as the companies and dealers have a large financial stake in the Internal Revenue Service's (IRS) response to that question. The situation requires special attention since the frequency of audits by IRS agents has increased over the last five years; moreover, the audits seem to be increasingly focused on the forest industry. The agent may investigate the situation by examining the books and records of the company, dealer, or producer and may also personally interview suppliers and contractors about that relationship.

Should the agent determine that a company, dealer, or producer is legally considered the employer of those presumed to be employees of a subcontractor, the agent may make an assessment for one or more years. Some assessments have been for as many as ten years and have ranged from a low of \$3,000 to a high of \$750,000. The assessment occurs because the IRS claims that the organization was an employer, that the persons doing the work were employees, not independent contractors, nor employees of contractors, and that no income tax was paid on these employees. Therefore, the employer is liable since there was no withholding.

So, the timber industry's need for protection and compliance with the law is significant. The attached independent contractor agreements will be a step toward insuring protection for the logger and compliance with the federal and state laws designed to protect employees.

The timber industry will also benefit by obtaining an improved working knowledge of the law relative to workers' compensation, labor relations, unemployment compensation, and social security on the issue of Independent Contractor vs. Employee Status. The underlying question is who is an independent contractor and who is an employee for purposes of income tax, workers' compensation, unemployment compensation, labor law, and social security?