



# Your Advantage

*News and information to help you and your business succeed*

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## Employer Advantage announces

### Electronic W-2

More than 10% of Employer Advantage client's employees are signed up for 2009 electronic W-2s. Some good reasons to think about Electronic W-2s:

- Go Green, save a tree
- Get your W-2 faster than snail mail
- Start a fad

Sign up today at

<https://www.GetMyTaxForm.com/employeradvantage>.

### Flu Shot Clinic

Employer Advantage will offer a Flu Shot Clinic on October 1, 2009 from 7-9 am and 4-6 pm. The vaccine offered with NOT be the H1N1 vaccine, but will be the regular seasonal flu vaccine. Shots and nasal mist vaccines will be available.

Please contact Employer Advantage if you plan to attend.

### Discount at Ozarks Regional YMCA

Employer Advantage is pleased to announce that client employees who sign up for membership at the Ozarks Regional YMCA locations (Springfield, Hollister, Monett, Cassville, and Bolivar MO) will receive discounted memberships.

Those who sign up during September will have the joining fee waived for memberships that begin October 1, 2009. In addition, the employee will receive 10% off the monthly membership fee.

Employees who sign up after the September membership drive will have to pay the joining fee but will receive the discounted monthly membership.

Employer Advantage and Ozarks Regional YMCA look forward to offering the discounted membership benefits every autumn during the month of September. For more information, please contact Janice Stokes at [jstokes@yourdowntownymca.org](mailto:jstokes@yourdowntownymca.org) or Suzanne Bowling at [suzanne@employeradvantage.com](mailto:suzanne@employeradvantage.com).

## Are Your Independent Contractors Really Employees?

It's tempting. You have an employee who would like to spend more time with his family, and still work for you but from home. He's a good employee and you'd hate to lose him, and you know he could help your business by working from home – so you make him an Independent Contractor. Everything is good, right?

Not exactly. Just because a person works from his or her house, doesn't necessarily make an independent contractor. The IRS recently published the "Ten Tips for Business Owners" to help small businesses make determinations as to whether they have employees or independent contractors. We've outlined some critical questions to answer if you are considering independent contractors in lieu of employees:

**1. Who controls the work?** Federal law and most state laws look at this question first and foremost. Employees are subject to the employer setting their work hours, tools, location and number of companies for whom they work. True independent contractors have absolute control over their work. They can set their own hours, supply their own tools, maintain a separate place of business and work for any number of other clients.

**2. Does the business and independent contractor provide the same services/products?** If the business provides a certain service and "contracts" with an off-site worker who only provides the same service, and only for that one company, the IRS may view that worker as an "employee." However, if the worker provides a service or product that the employer doesn't provide and the working relationship has a specific length of time, that worker could be considered an independent contractor.

**3. How do you pay this person?** Contractors are typically paid by the job. Piece rate, pay by the hour, or commission may designate the worker as an employee.

**4. What financial risks does the worker take?** An employee draws "wages." An independent contractor may incur loss or gain, because he or she bids for jobs, pays for materials or supplies, and pays overhead costs in order to run his or her business.

We know that there is a tax savings when you have independent contractors and the IRS isn't really going to bother with your small business, so why not take a chance? Unfortunately, your odds might not be that good.

According to TRAC (Transactional Records Access Clearinghouse) of Syracuse University, the number of audits in 2007 for business with under \$5 million in revenue, increased by 41% as compared to the number of audits in 2005. For businesses with revenue between 5 million and \$10 million, the audits increased by 24%. During the same time frame, audits for large businesses (over \$50 million in revenue) decreased by at least 30% and up to 38% for businesses over \$150 million in revenue.

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The IRS and state governments have begun to step up their auditing of companies in order to recover lost revenue due to non-reporting of income by independent contractors. One method is to search through databases and match employer-issued 1099 forms with contractor's businesses income tax returns. This has led to the IRS determination that an independent contractor who claims that his income is virtually only from one company is usually an employee.

**Other ways that an illegal classification can come to light:**

- An independent contractor who is hurt on the job (not necessarily the employer's premises) and files for workers' compensation. The employer may be out back premiums for the workers' compensation insurance and could also be responsible for the total medical bill and any settlements.
- The independent contractor is not working and files for unemployment. Since no unemployment taxes have been paid on this worker, the employer will be responsible for paying them at the state level as well as other state back taxes.
- The independent contractor files a Wage and Hour complaint because they don't receive overtime, yet are being treated like an employee in many ways. Since the company hasn't required timekeeping by the worker, it will be difficult to disprove overtime hours worked in excess of 40 hours per week. If the independent contractor is determined to be an employee, the company may be liable for payment of back overtime wages.
- The independent contractor files an EEOC claim due to discrimination. The workers isn't receiving the same benefits, pay, or privileges even though they are doing the same work as all the other employees.

What happens if your independent contractor is found to be an employee? The state and federal government can make a retroactive determination that the contractor should have been an employee all along. The company becomes responsible for paying all the uncollected taxes; both the company's share and the employee's share. If the company can go under the safe-harbor settlement program, the back taxes could be limited to one year as a best-case scenario. As we can see from above, other expenses can come from back pay, back premiums, medical bills, and lawsuits.

Employer Advantage offers assistance in independent contractor testing. Our goal is to keep clients compliant with the various state and federal laws, even at times when it doesn't seem to make the best business sense. However, Employer Advantage weighs the risks and makes recommendations so that clients are aware of potential outcomes and can make the best long term decisions possible.

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## Shared Work Program

The Missouri Shared Work Unemployment Compensation Program is designed to help employers and employees. It allows an employer to divide the available work or hours of work among a specified group of affected employees in lieu of a layoff, and it allows the employees to receive a portion of their unemployment benefits while working reduced hours. Many states have similar programs under a different name.

In Missouri, an employer must reduce the normal work hours of the affected unit by at least 20% (but less than 40%) and the plan must apply to at least 10% of the employees in the affected unit who meet monetary requirements for regular unemployment compensation. If the plan is approved by the Division, workers who qualify for unemployment benefits would receive both wages and Shared Work benefits for up to 26 weeks. The Shared Work benefits would be that percentage of regular unemployment benefits which matches the reduction described in the employer's plan.

**Example of a Shared Work Program**

A firm facing a 20% reduction in production usually lays off one-fifth of its work force. Faced with this situation, a company could retain its total work force on a four-day-a-week basis. This reduction from 40 hours to 32 hours cuts production by the required 20% without reducing the number of employees. All affected employees receive their weekly wages based on four days of work and in addition, receive a portion of unemployment compensation benefits equal to 20% of the unemployment compensation weekly benefit amount payable had the employee been unemployed a full week.

**Conditions for possible approval of a Shared Work Plan:**

- The "affected unit" is not less than three employees;
- The normal weekly hours of work and corresponding wages for a participating employee are reduced in the plan of at least 20% but less than 40%;
- The plan applies to at least 10% of the employees in the affected unit;
- The plan describes the manner in which the participating employer treats the fringe benefits of each employee in the affected unit;
- The employer certifies that the implementation of a Shared Work Plan and the resulting reduction in work hours is in lieu of a temporary layoff that would affect at least 10% of the employees in the affected unit and that would result in an equivalent reduction in work hours;
- The employer has filed all reports required to be filed for all past and current periods and has paid all contributions due for all past and current periods.

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### Conditions For Shared Work Benefits:

- An individual must accept all work offered by the participating employer for the claim period filed;
- An individual must be able to work and be available for full-time work with the participating employer;
- An individual must be eligible for regular benefits in the state of Missouri;
- No benefits will be paid to an individual who works for the participating employer more than the reduced hours specified in the plan.

### Will Participation Affect An Employer's Unemployment Tax Rate?

Benefits paid under Shared Work Plans are charged back against employers' accounts for use in computing general (experience) tax rates. They affect employers' tax rates in the same manner and to the same extent as other chargebacks of benefits.

An employer eligible for a tax rate based on individual experience has the potential of paying a maximum rate of 9% plus applicable surcharge and any percentage increase/decrease. The potential for a 9% maximum rate remains in effect for the year the employer participates in the Shared Work Program and for three years following.

### For More Information

To find out if a Shared Work Plan might benefit your employees and your company, contact Susan Whitlock, in the Risk Management Department at Employer Advantage. She may be reached by email at [whitlock@employeradvantage.com](mailto:whitlock@employeradvantage.com) or by calling 800-467-3909 ext. 424. Susan will be glad to assist employers with Missouri Shared Work Plan questions or questions regarding similar plans in other states

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## Prepare Now for Flu and Cold Season

According to the first Healthy Hand Washing Survey, sponsored by the Bradley Corporation, about half of Americans still wash their hands as much as they used to. The survey found that 54% "wash their hands no more or less frequently" in public restrooms since the H1N1 virus emerged.

By the same token, an informal poll of local businesses revealed many employers have not reviewed their sick leave/time off policies since the outbreak of H1N1 last spring. It appears as though many people are waiting to see the H1N1 virus will live up to the latest projections of 2 billion people becoming ill, before changing anything.

The U.S. Centers for Disease Control and Prevention (CDC) recommends that employers take action now to review sick leave policies and educate employees about healthy habits to reduce business interruptions during the flu season.

### CDC Recommendations

Once employers give a time off benefit to employees, it is difficult to take back. If there isn't a sick leave/time off policy currently in place, employers might want to consider one. If one is currently in place, employers will want to review it and tweak it to accommodate their staff.

#### CDC recommendations regarding sick leave include:

- Setting up sick leave accrual if there is none in place now
- Allowing employees to use personal sick leave to care for family members
- Allowing employees to work from home (while caring for family members)
- Limiting travel and utilizing electronic communication during the flu season

#### CDC recommendations regarding healthy habits include:

- Requiring employees to stay home at least 24 hours if they have a fever.
  - Placing hand washing posters in all break rooms and restrooms.
  - Buying hand sanitizer for work stations and shared areas (such as the mailroom or copier)
  - Providing tissue for work areas.
  - Spraying or cleaning shared work/break areas more frequently with antibacterial cleaners.
  - Having an in-service training to remind workers about good sanitary habits to use at work (and at home)
- Posters are available through the CDC to remind employees about healthy habits and hand washing in order to prevent catching the flu or common cold. These posters are available for download at <http://www.cdc.gov/germstopper/materials.htm>.

### H1N1 Vaccines

The CDC has indicated that safety tests are being done on the H1N1 vaccine and it is expected to become available in the latter half of October. The CDC recommends that people still get the "regular" flu shot to protect against the seasonal flu that typically claims about 36,000 lives nationwide per year.