

Dear Club Director,

We have been made aware of a situation, in which an HOA-affiliated club has been audited by the IRS. The IRS ruled that coaches in the club were employees and did not qualify as independent contractors. The Club was charged back taxes of several thousands of dollars.

We had a law firm look into this matter and received some advise, that we like to pass on to you all. We do not have any intend to tell you how to run your business or organize your club, but we think that this is an issue that puts clubs at risk and the information below may help you in your management decisions.

If you have any further questions on the subject or your specific situation, we suggest you check with your accountants. If you do not use an accountant, check within your club if you have access to resources. There may be some accountants or lawyers among your parents that can give you more specific advise that pertains to your situation. We cannot tell you much more than the information that is in the report below.

HOA

Here is part of the report we received from the law firm pertaining to the classification of coaches as independent contractors:

Classifying Coaches and Part-time Employees as Independent Contractors

Per the information we received, HOA advises several volleyball clubs, which range from groups of parents who put teams together to professional organizations. Most clubs currently classify their coaches as independent contractors and do not pay employment taxes on payments to coaches. This has resulted in an unfavorable result for at least one club when the IRS performed an audit. The IRS found the coaches were actually employees, primarily because the club provided the coaches' equipment. Based on our review of the law, the clubs may be incorrectly classifying these employees if they are providing equipment, instructions, training, facilities, or monthly payments to the coaches.

There are different tests for whether an individual is an employee or independent contractor under different laws. The primary area of concern for club coaches is likely the state employment security laws, which govern unemployment taxes. A secondary area of concern might be overtime or minimum wage concerns if the coaches were classified as employees under FLSA. The classification under FLSA is also important as it applies to the part-time employee of HOA who is also paid as a general contractor for some tasks.

A. Classification Under State Employment Security Law

Whether an individual is classified as an employee or independent contractor depends on whether the person or business for whom services are performed (or "the employer") has

the right to control and direct the individual who performs the services (“the individual”). The employer must have the right to control not only the result of the work, but also the details and means by which it is accomplished. KAN. STAT. ANN. § 44-703. See IRS REV. RULE 87-41 (1987); 26 CFR § 31.3401(c)–1. The employer need not actually control the details, but must only have the right to do so. In both Kansas and Missouri, the key question is the level of control the employer has in the relationship.

Whether or not an employer has the right to control the details and means of an individual’s work requires the analysis of several factors that are derived from the case law, rather than by any one definitive test. The most comprehensive list of factors is the IRS’s 20-factor list. Although not an exhaustive list, these are the key factors usually analyzed by courts in Missouri and Kansas in deciding whether individuals are employees or independent contractors. An individual may be an employee if:

1. **The individual is required to comply (or the employer has the right to require compliance) with instructions about when, where, and how the work is to be performed.**
2. **The employer provides training to the individual.**
3. The individual’s services are “integrated” into the business operations, meaning that the success or continuation of a business depends “to an appreciable degree” upon the performance of the services.
4. The individual’s services must be rendered by the individual personally.
5. The employer hires, supervises, or pays assistants for the individual.
6. **The relationship is continuing. A continuing relationship may be one in which the work is frequently recurring although not on a regular schedule.**
7. **The employer establishes set hours for the individual.**
8. The individual works full time or must devote substantially full time to the employer.
9. The individual performs work on the employer’s premises, especially when the work could be done elsewhere.
10. The individual must perform services in an order or sequence set by the employer.

11. The individual is required to submit regular reports, either oral or written.
12. **The individual is paid by the hour, week, or month rather than a lump sum or payments toward a lump sum. Payment by the job or commission-only may indicate an independent contractor relationship.**
13. **The employer pays the business or travel expenses of the individual.**
14. **The employer provides significant tools, materials, or other equipment.**
15. **The individual does not invest in facilities used in the performance of his services, such as office space rental. An individual may be an employee if he depends on the employer for facilities.**
16. An individual cannot realize any profit or loss as the result of his services in addition to the profit or loss ordinarily realized by employees.
17. The individual works for only one employer or firm at a time, or performs only a de minimis, or insignificant, amount of services for any other employer or firm.
18. The employer has the right to discharge the worker. An independent contractor cannot be discharged so long as he produces the desired result.
19. The individual has the right to terminate the relationship at any time without incurring liability.
20. The individual who makes his services available to the general public is more likely to be an independent contractor rather than an employee.

Particularly problematic for volleyball clubs contracting with coaches are those factors bolded above. Those clubs may be able to avoid forming an employer/employee relationship by being careful to avoid close control of how the coaches perform their jobs. Below are tips you can provide to clubs to minimize control:

- The clubs should avoid telling the coaches when and where to practice. The clubs could use a system where they tell the coaches

about available facilities, but allow coaches to set their own practice schedules and locations.

- The clubs should avoid providing training to coaches when feasible. An alternative is directing coaches toward an outside provider of training.
- The clubs or parents could agree to pay coaches a lump sum for a season, rather than a monthly fee amount or hourly coaching rate. The lump sum may be divided into payments for convenience.
- The clubs should not provide equipment to the coaches.
- The clubs should allow coaches to rent their own practice facilities.
- Clubs should not directly reimburse coaches for travel to out of town tournaments.
- The clubs should consider requiring a renewal agreement with coaches each season, to avoid the appearance that the relationship is continuing.
- Coaches who have full-time jobs outside of coaching are less likely to be deemed employees.

Based on our understanding of the clubs' relationship with the coaches, the clubs may be able to continue to classify the coaches as independent contractors as long as the clubs are careful to maintain a "hands-off" relationship that allows the coaches to work without the clubs' control. If the clubs currently provide some of the above items that would constitute an expense to the individual coach, the clubs should consider a lump-sum payment for each season that would adequately compensate the coach for the expenses of the season, but should avoid directly furnishing the things the coach needs to do his job.

Also note that the way the club characterizes its relationship with a coach is not determinative. Courts will look beyond an agreement that is characterized as an independent contractor agreement and analyze the actual relationship between the employer and the individual.