

JONES COUNTY JUNIOR COLLEGE
SMALL BUSINESS DEVELOPMENT CENTER
A MEMBER OF THE MISSISSIPPI SMALL BUSINESS
DEVELOPMENT CENTER (MSBDC) NETWORK.
MSBDC has assisted Mississippi businesses since 1981

NEWSLETTER

=====
Special edition on: Employee or Independent Contractor?
July 2005 Issue
Director: Greg Butler
=====

In This Issue
=====

1. Welcome From The Director
2. Employee or Independent Contractor?
3. Quote of the Month
4. Workshop Schedule
- 5 Subscription Management
6. Contact Information

=====
1. Welcome From The Director
=====

I often hear small business owners state that they are not going to have any employees but rather are just going to have independent contractors. This is sometimes done by business owners to avoid the time and paperwork of having to withhold income taxes and FICA and avoid paying payroll taxes and unemployment taxes. I advise the business owners to be sure that they understand the difference between an employee and independent contractor. If an employee is misrepresented as an independent employee, the business owner could face having to pay the amount in payroll taxes that should have been paid since that person was hired plus penalties and interest and in some cases the amounts owed in income tax and FICA that the person should have paid. The Internal Revenue Service has defined the difference between an independent contractor and employee. This month I have included this definition in my newsletter.

As of July 1, 2005, Ken Dupre' has joined the JCJC Small Business Development Center as a part-time counselor. Ken will be working primarily in the Hattiesburg area. We are in the

process of finding an office for him in Hattiesburg. I am excited about Ken joining us because he brings exceptional experience and knowledge to our center. He was a prior director at the JCJC SBDC, and he is a business owner.

On a much sadder note, our long-time secretary, Janie Boykin, has decided to take a job in the Work Based Learning Department here at JCJC. I wish Janie well with her new position and thank her from the bottom of my heart for all that she has done for me and the JCJC SBDC.

---Greg Butler

NOTE:

Our subscriber list is NOT made available to other companies or individuals. We value every subscriber and respect your privacy. If at any time you wish to cancel your subscription, simply type 'remove' in your return email address.

=====
2. Employee or Independent Contractor?
=====

The courts have considered many facts in deciding whether a worker is an independent contractor or an employee. These relevant facts fall into three main categories: behavioral control, financial control, and relationship of the parties. In each case, it is very important to consider all of the facts — no single fact provides the answer. Carefully review the following definitions.

BEHAVIORAL CONTROL

These facts show whether there is a right to direct or control how the worker does the work. A worker is an employee when the business has the right to direct and control the worker. The business does not have to actually direct or control the way the work is done — as long as the employer has the right to direct and control the work. For example:

- Instructions – if the worker receives extensive instructions on how work is to be done, this suggests that the worker is an employee. Instructions can cover a wide range of topics, for example:
 - how, when, or where to do the work
 - what tools or equipment to use

- what assistants to hire to help with the work
- where to purchase supplies and services.

If the worker receives less extensive instructions about what should be done, but not how it should be done, he/she may be an independent contractor. For instance, instructions about time and place may be less important than directions on how the work is performed.

-Training – if the business provides the worker training about required procedures and methods, this indicates that the business wants the work done in a certain way, and this suggests that the worker may be an employee.

FINANCIAL CONTROL

These facts show whether there is a right to direct or control the business part of the work. For example:

-Significant Investment – if the worker has a significant investment in the work, he/she may be an independent contractor. While there is no precise dollar test, the investment must have substance. However, a significant investment is not necessary to be an independent contractor.

-Expenses – if the worker is not reimbursed for some or all business expenses, then he/she may be an independent contractor, especially if the unreimbursed business expenses are high.

-Opportunity for Profit or Loss – if the worker can realize a profit or incur a loss, this suggests that the worker is in business for himself/herself and may be an independent contractor.

RELATIONSHIP OF THE PARTIES

These are facts that illustrate how your business and the worker perceive their relationship. For example:

-Employee Benefits – if the worker receives benefits, such as insurance, pension, or paid leave, this is an indication that he/she may be an employee. If the worker does not receive benefits, the worker could be either an employee or an independent contractor.

-Written Contracts – a written contract may show what both you and the worker intend. This may be very significant if it is difficult, if not impossible, to determine status based on other facts.

WHEN THE WORKER IS AN EMPLOYEE

Your business must withhold income tax and the employee's portion of social security and Medicare taxes. Also, you are responsible for paying social security, Medicare, and unemployment (FUTA) taxes on the employee's wages. You must give the worker a Form W-2, Wage and Tax Statement, showing the amount of taxes withheld from his/her pay.

WHEN THE WORKER IS AN INDEPENDENT CONTRACTOR

You may be required to give the worker Form 1099-MISC, Miscellaneous Income, to report what you have paid him/her.

The worker is responsible for paying his/her own income tax and self-employment tax (Self-Employment Contributions Act – SECA). You do not withhold taxes from the worker's pay.

The worker may deduct business expenses on Schedule C of his/her income tax return.

IRS TAX PUBLICATIONS

If you are not sure whether the worker is an employee or an independent contractor, complete Form SS-8, Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding. Publication 15-A, Employer's Supplemental Tax Guide, provides additional information on independent contractor status.

Source: Internal Revenue Service Publication 1779
"Independent Contractor or Employee". Rev. 12-99

=====
3. Quote of the Month
=====

"Procrastination is opportunity's natural assassin."
----Victor Kiam

=====
4. Workshop Schedule
=====

SO YOU WANT TO START YOUR OWN BUSINESS

- Greg Butler, Presenter

Cost: FREE

Monday, 1:30 - 4:30 p.m.

(JCJC Campus, Forestry and Life Science Building, Room 206)

9/19

10/17

Tuesday, 9:00 a.m. – 12:00 noon

(Lake Terrace Convention Center, Executive Conference Room)

8/2

9/6

10/4

Tuesday, 6:00 p.m. - 9:00 p.m.

(JCJC Campus, Forestry and Life Science Building, Room 206)

9/13

10/11

Tuesday, 6:00 p.m. – 9:00 p.m.

(Lake Terrace Convention Center, Executive Conference Room)

7/26

8/23

9/27

SERVSAFE CERTIFICATION TRAINING

(JCJC Campus, Community Services Building)

-Kathy St. Amant, Presenter

Cost: \$125.00

7/26 – 7/28

9:00am – 4:30pm

8/23 – 8/25

9:00am – 4:30pm

9/26 – 9/30

5:00pm – 9:00pm

To register for any of these workshops, please call us at (601) 477-4235 or e-mail us at sbdc@jcc.edu.

=====
5. Subscription Management
=====

You will continue to receive the Small Business Development Center Newsletter automatically. You may unsubscribe at any time by simply sending a reply with the message: "Remove from newsletter." Or if you received this newsletter from a friend or associate and want to sign up, simply send a reply with the message: "Please sign me up for your newsletter."

=====
6. Contact Information
=====

Greg Butler
Small Business Development Center
Jones County Junior College
900 S. Court Street
Ellisville, MS 39437
Phone: 601-477-4165 or Fax: 601-477-4166
Email: greg.butler@jcc.edu
Website: www.jcc.edu/sbdc.html
A member of the Mississippi Small Business Development Center Network

Helping to Develop the Pinebelt One Business at a Time!

Jones County Junior College Small Business Development Center is a member of the Mississippi Small Business Development Centers (MSBDC) network. MSBDC has assisted Mississippi businesses since 1981. MSBDC is a program supported by the U.S. Small Business Administration and extended to the public on a non-discriminatory basis. SBA cannot endorse any products, opinions, or services of any external parties or activities. This information is compiled by the Small Business Development Center at Jones County Junior

College and was obtained from sources believed to be reliable at the time it was prepared. The information in this newsletter is intended to be used for general planning purposes only and should not be construed as tax, legal, accounting, or other professional advice.
