

From the desk of Jeanne M. Kerkstra, Esq., CPA

**Viewpoint
By Decree, Everyone's an Employee**

The Vermont Supreme Court recently made a startling conclusion. It found that workers who work at home for a company, who set their own hours and supply their own equipment, are **employees** of said company and **not** independent contractors. (*Fleece on Earth v. Vermont Department of Employment and Training*, Vt, No. 2005-367, 5/4/07)

The IRS has a set of factors that they review that is not exhaustive and is meant to be illustrative in determining if a worker is either an employee or an independent contractor. States also set out their guidelines. Because there is no precise definition, the process involved can be quite subjective. It appears that States start with the presumption that all workers are employees. It is up to the companies to prove otherwise. For companies who truly believe they have independent contractors, it is a tremendous burden if a State's unemployment department makes an adverse determination. Often times, the financial livelihood of the company rides on this determination.

For those companies who utilize independent contractors (and there are many), it is imperative to be alert to the trends developing with the IRS and with the States. Your company's future can depend on it.

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