EMPLOYER RESPONSIBILITIES

HOUSTON ONE STOP BUSINESS CENTER, P.O. Box 1562, Houston, Tx. 77251 - PH: 713-247-2982

*THE FOLLOWING AGENCIES REGULATE BUSINESSES WITH EMPLOYEES. TO DETERMINE WHETHER OR NOT YOU HAVE EMPLOYEES, OR FOR INFORMATION ON CONTRACT EMPLOYEES AND EMPLOYEE LEASING, CALL THE **TEXAS WORKFORCE COMMISSION**. FOR SPECIFIC LAWS OR STATUTES, CONTACT THE INDIVIDUAL AGENCY.*

SEE ALSO: www.tded.state.tx.us/guide/STEP4.html

- ***TEXAS WORKFORCE COMMISSION*** ***www.twc.state.tx.us***
  281-933-3858 ***(1-800-832-9394)***

  12455 Beechnut, Houston. The TWC Tax Office handles Unemployment Insurance Taxes and the State Employment I.D. Number. CALL THE TWC IF YOU HAVE QUESTIONS ABOUT BEING AN EMPLOYER VERSUS A CONTRACTOR. The Payday Law Unit is at 800-832-9243. TWC also administers the Texas Unemployment Compensation Act (TUCA), the Texas Child Labor Law, the Texas Payday Law, and the Texas Minimum Wage Act. UNEMPLOYMENT INSURANCE HOTLINE: 800-558-8321.

- ***TEXAS NEW HIRE PROGRAM*** ***www.newhire.org/tx/***
  1-888-839-4473

  P.O.Box 149224, Austin, 78714. **Effective October 1, 1998**, in accordance with the federal Personal Responsibility and Work Opportunity Reconciliation Act **(PRWORA)** of 1996, all Texas employers will be required to report certain information on newly hired and rehired employees to a State Directory of New Hires. Under federal welfare reform legislation enacted last year, New Hire Reporting is a program for the reporting by employers of information on newly hired employees to the Employer New Hire Reporting Operations Center within 20 days after the date a new employee is hired. The employee information is entered into a statewide registry and then transmitted to the National Directory of New Hires. The entries on the State and National registries are compared to databases of various state agencies, including the Child Support Program. The information contained in the directories will be used by the Child Support Program to locate parents who have not paid their child support obligations. Once these parents are located, it may be possible to establish new child support orders or modify and enforce existing orders.

- ***TEXAS WORKERS' COMPENSATION COMMISSION*** ***twcc.state.tx.us***
  713-943-0800 ***(TDD: 7-1-1)***

  1445 N. Loop West, #600. Employers with 15 or more employees, and maintain Workers' Compensation insurance coverage shall adopt a policy designed to eliminate drugs, alcohol, inhalants, and illegal drugs from the workplace. TWCC has a **HEALTH & SAFETY HOTLINE** (1-800-452-9595) for reporting unsafe working conditions, and a **GENERAL INFORMATION HOTLINE** (1-800-252-7031). For outside City of Houston, Call 800-372-7713 for handling Workers' Compensation claims.

- ***EQUAL EMPLOYMENT OPPORTUNITY COMMISSION*** ***www.eeoc.gov***
  713-209-3320 (TDD: 713-209-3439)

  1919 Smith St., 7th Floor. Title VII of the Civil Rights Acts of 1964 and 1991, prohibits discrimination in hiring, promotion, discharge, pay and fringe benefits, on the basis of race color, religion, sex, or national origin. The **AMERICANS WITH DISABILITIES ACT (ADA)**, as pertaining to employment, is enforced by the EEOC. The U.S. Justice Dept. enforces the ADA as it relates to public accommodations and communications. Employers must display the "EEOC Poster" conspicuously in the workplace. The EEOC also enforces the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973.

- ***IMMIGRATION AND NATURALIZATION SERVICE*** ***www.ins.usdoj.gov***
  800-375-5283 & 281-847-7900 ***(TDD: 800-767-1TDD)***

  509 North Belt. The Immigration Reform and Control Act of 1986 states that employers should hire only U.S. citizens and aliens authorized to work in the U.S. You must verify employee eligibility for anyone hired after Nov. 6, 1986, and must complete and retain "Form I-9". Call for Handbook M-274. Forms are available by calling 1-800-870-3676.

- ***OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION*** ***www.osha.gov***
  281-286-0583 or 281-591-2438

  17625 El Camino Real, Suite 400. Certain businesses must maintain records on occupational illnesses and injuries and are subject to OSHA inspections. Most businesses with employees must display the "OSHA Poster".

- ***U.S. DEPT. OF LABOR, Wage & Hour Division*** ***www.dol.gov***
  713-339-5500 (New)

  9990 Richmond Ave., #202. Inquire as to Minimum Wage Requirements, overtime, and child labor recording under the Fair Labor Standards Act. DOL also has Fair Labor Standards Act and Polygraph Protection Act posters for applicable businesses. Current wage scales are: Federal Minimum Wage- $5.15/hour; Youth Subminimum Wage- $4.25/hour; Texas State Minimum Wage- $3.35/hour (applies to employees not covered by the Federal Fair Labor Standards Act- enforced by the Texas Workforce Commission, Labor Law Dept.). The U.S. DOL also enforces the Family and Medical Leave (FMLA) Act of 1993. The FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons.

- ***PENSION & WELFARE BENEFITS ADMIN.*** ***www.dol.gov/dol/pwba***
  214-767-6831

  The PWBA enforces the Employment Retirement Income Security Act of 1974 (ERISA), which requires administrators of private pension and welfare plans to provide plan participants with easily understandable summaries of plans; to file those summaries with the National PWBA, Summary Plan Description Office at 202-219-8769. PBWA also administers COBRA (Consolidated Omnibus Budget Reconciliation Act) where terminated employees or those who lose health coverage because of reduced work hours may be able to buy group coverage for limited periods of time.

- ***U.S. SOCIAL SECURITY ADMINISTRATION*** ***www.ssa.gov***
  1-800-772-1213

  Each employee must have a Social Security Number to work in the US. Employers must have proof of employees' SSN's to properly report earnings to the Social Security Administration, and to the IRS for income tax purposes.

FYI!!!

The **WorkSource** is a comprehensive human resources provider serving the 13-county Houston-Galveston Gulf Coast region. We help employers solve workforce-related business problems and individuals make career transition.

* Job listings posted on public boards and on electronic job banks
* Referrals to job openings that match skills and experience
* Resume assistance through workshops and specialized software
* Copiers, fax machines, telephones and computers available for use in job search efforts
* Internet access to post resumes, conduct research, and look at job openings
* Labor market information, including local employment trends
* A resource library for job searching, career choices, education and training

If you are a job seeker and are interested in obtaining employment services, call 1-888-469-JOBS (5627).

(GSP-02.WPD; Rev. 7-05)

REQUIRED WORKPLACE POSTERS

HOUSTON ONE STOP BUSINESS CENTER, P.O. Box 1562, Houston, Tx. 77251 - Ph. 713-247-2982

Employers Are Required by Law to Display the Following Posters And/or Documents Prominently in Their Place of Business. ***Businesses Are Responsible for Displaying All Posters Required by Law.*** *Call the Agencies Listed below for Posting Procedures and Availability.* The ONE STOP BUSINESS CENTER does not refer to companies providing all-in-one posters.

POSTERS ONLINE: www.twc.state.tx.us/ui/lablaw/posters.html

Various laws require employers to display several posters at the workplace. These posters are available, free of charge, from the following agencies. If your employees are entitled to file for state unemployment benefits and are also covered by the Texas Payday Law, you should request the poster that combines both laws:

TEXAS UNEMPLOYMENT COMPENSATION ACT and the TEXAS PAYDAY LAW (512-463-2747)

If you prefer, you can fax your request to (512) 936-3205. When faxing a request for posters, please include your TWC Account Number, your address for mailing posters, and the number of posters you need printed in English and printed in Spanish (Spanish-language posters are not a requirement). You can also order posters by calling (512) 463-2747.

If your business is not liable under the Texas Unemployment Compensation Act, but as a Texas employer you are subject to the Texas Payday Law, you should request the Payday Law Poster at 1-800-832-9243 or (512) 837-9559 or click on the linked title below.

TEXAS PAYDAY LAW POSTER - ENGLISH / SPANISH

www.twc.state.tx.us/ui/lablaw/ll10.pdf

This poster is in PDF format. To download, click on the linked title; to view and print you will need Acrobat Reader, available free of charge from Adobe Systems Incorporated. To print, click on the printer icon within Acrobat Reader.

USERRA POSTER

www.dol.gov/vets

U.S. Department of Labor – The Uniformed Services Employment and Reemployment Rights Act (USERRA). This poster is in PDF format. To download, click on the linked title; to view and print you will need Acrobat Reader, available free of charge from Adobe Systems Incorporated. To print, click on the printer icon within Acrobat Reader.

USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service.

USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.

FAIR LABOR STANDARDS ACT (FLSA) POSTER

www.dol.gov/esa/regs/compliance/posters/flsa.htm

EMPLOYEE POLYGRAPH PROTECTION ACT (EPPA) POSTER

www.dol.gov/esa/regs/compliance/posters/eppa.htm

FAMILY MEDICAL LEAVE ACT (FMLA) POSTER

www.dol.gov/esa/regs/compliance/posters/fmla.htm

MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT (MSPA) POSTER

www.dol.gov/esa/regs/compliance/posters/mspaensp.htm

U.S. Department of Labor - Wage and Hour Division (DOL) requires the above four (4) posters. An employer is required to post these notices only if covered under that particular Act. If you have any questions concerning coverage, you can go to the Summary of Laws, Regulations and Technical Assistance Services, or call the U.S. Department of Labor, Wage and Hour Division (DOL) toll-free at (866-487-9243). You can contact the nearest Houston DOL district office at (713-339-5500).

JOB SAFETY & HEALTH PROTECTION POSTER

www.osha-slc.gov/Publications/poster.html

U.S. Department of Labor/Occupational Safety & Health Administration (OSHA)

You can contact an OSHA office in your area by calling one of the following numbers:
Houston North (281-591-2438)
Houston South (281-286-0584)

EQUAL EMPLOYMENT OPPORTUNITY ACT POSTER
AMERICANS WITH DISABILITIES ACT OF 1990 POSTER

www.dol.gov/esa/regs/compliance/posters/eeo.htm

U.S. Equal Employment Opportunity Commission (EEOC) (800-669-3362)

THE LAW IN TEXAS (PDF) (Optional) (512-463-2642)

www.twc.state.tx.us/crd/eeoposter.pdf
Issued by: Texas Workforce Commission - Civil Rights Division

WORKERS' COMPENSATION POSTERS (English and Spanish)

www.tdi.state.tx.us/wc/forms/index.html#coverage

Texas Department of Insurance, Division of Workers' Compensation (512-804-4240)

DO CARRY WORKERS' COMPENSATION INSURANCE AND HOW EMPLOYEES CAN REPORT WORKPLACE SAFETY VIOLATIONS (Notice #6). You will need the form number when ordering poster.

DO NOT CARRY WORKERS' COMPENSATION INSURANCE AND HOW EMPLOYEES CAN REPORT WORKPLACE SAFETY VIOLATIONS (Notice #5). You will need the form number when ordering poster.

(GSP-02a.WPD; Rev 12-05)

CONTRACT LABOR

HOUSTON ONE STOP BUSINESS CENTER, P.O. Box 1562, Houston, Tx. 77251-1562, Ph: 713-247-2982

"Contract labor" may be the most widely used misnomer in business today. The issue is really whether a given worker is an employee or an independent contractor. In basic terms, an employee is someone over whose work an employer exercises direction or control and for whom there is extensive wage reporting and tax responsibility. An independent contractor is self-employed, bears responsibility for his own taxes and expenses, and is not subject to an employer's direction and control. The distinction depends upon much more than what the parties call themselves.

The Texas Unemployment Compensation Act does not directly define "independent contractor". Instead, it sets forth a broadly inclusive test, known as the "direction or control" or "common law" test, for who is an employee: "'employment' means a service, including service in interstate commerce, performed by an individual for wages or under an express or implied contract of hire, unless it is shown to the satisfaction of the Commission that the individual's performance of the service has been and will continue to be free from control or direction under the contract and in fact". By implication, an "independent contractor" would be a person whose services do not meet the above test.

It is important to note that it does not matter that one or both parties may call their arrangement "contract labor". The above definition makes clear that the important consideration is the underlying nature of the work relationship. The law creates a presumption of employment and places the burden for proving otherwise on the employer. It sets forth the primary factor in an independent contractor relationship, namely, the absence of direction and control over the work.

SPECIFIC CRITERIA FOR DEFINING CONTRACT LABOR

Text taken from: www.twc.state.tx.us/news/efte/specific_criteria.html

Employers often confront these issues over short-term or as needed workers performing services for them. Any employer using what it considers to be "contract labor" should ask itself some questions up front:

Is the service provided by the individuals in question essential to, and an integral part of, the service the employer provides to the public?

> The less able an employer is to offer its primary service without the help of the people whose status is at issue, the more likely it is that they will be considered employees. Consider this: if certain services are so essential to a business that it will stand or fall based upon how well those services are performed, the business will naturally want to exercise enough direction and control over the services to ensure they are good. That amount of control can make a company an employer of such workers.

What opportunity for profit or risk of loss is there for the worker? What kind of investment, other than his or her time, does the worker have in the enterprise?

> An employee is paid for her time. She would not be expected to provide her own workplace, materials, tools, and supplies, or otherwise to invest her own money in the business. An employee who makes a costly mistake can be fired, but cannot legally be forced to work without pay. An independent contractor, on the other hand, is an independent businessperson with expenses of his or her own. He will be expected to provide or purchase everything he needs to do the job. If he fails to satisfy the customer, he would be required to redo the work for no additional compensation, or else face the risk of non-payment by the customer. These things create the opportunity for profit or loss.

What is the compensation arrangement? Is the compensation negotiated, or is it imposed by the employer?

> A true independent contractor's main concern is her own bottom line, not that of the employer. Since she is responsible for

her own overhead, including the hiring of any helpers she may need, there is always an element of negotiation in any bona fide contract for services. Usually, but not always, an independent contractor is paid by the job. It is up to him to figure out how much he needs to finish the job at a profit. If he miscalculates, the loss is his.

Does the individual provide his services to the public at large? Does he advertise his services in newspapers, the Yellow Pages, or specialized journals?

If a person holds herself out to the public as self-employed and available for work for any customer with whom she can negotiate an acceptable price, she is likely to be held an independent contractor. The more the worker advertises, the more it is apparent that she is in business for herself, since an independent business stands or falls based upon its business development efforts.

Is there a non-competition agreement?

Generally, non-competition agreements and independent contractors do not go hand-in-hand. Such a provision in a contract is strongly indicative of an employment relationship, chiefly because it proves that the services in question are directly related to the primary service provided by the employer. If those services were not related, there would be no "competition" and thus nothing against which to guard. The power to keep a person from pursuing his or her own business interests and to force a person to sign such an agreement is typical of the power wielded by employers over employees.

Does the worker provide his services on a continuous basis?

The more long-term, continuous, and exclusive the relationship is, the more likely it is to be employment. Independent contractors, on the other hand, generally perform their work one job at a time and are paid on the same basis.

Is the worker required to provide services under the employer's name? Does she represent herself to the public as being an employee of the employer? On whose behalf are the services performed?

If the general public would perceive the person to be a representative of the employer because of business cards, uniforms, or other advertising, this would be more indicative of an employee than an independent contractor. An employee performs services on behalf of the employer for customers of the employer. An independent contractor performs services on her own behalf for her own customers.

Does the employer retain the right to dictate how the work should be done? Is the worker required to work a certain schedule, to notify the employer if he will not come to work, or to get the employer's approval for any helpers who are hired?

When an employer contracts for outside services, it is normally interested only in the end result, not in the details of how the contractor performs the work. The employer should have no interest in how the independent contractor allocates either his time or that of his helpers. By the same token, the employer would have no interest in the contractor's right to hire his own helpers, beyond the right to contractually specify that anyone providing services on a project must be properly licensed under whatever laws apply to the work.

(GSP-07C.WPD, 2-05)

DEED RESTRICTIONS FAQ

WEBSITE: www.houstontx.gov/legal/dr-faq.html

Deed Restriction Hotline: 713-437-6769

The following are some of the most frequently asked questions (and answers) received by members of the Deed Restriction Enforcement Team regarding deed restriction matters and the City of Houston's authority to enforce them:

Q1: Why is the City's Legal Department involved in the enforcement of deed restrictions? Doesn't the City of Houston have zoning?

A1: The City of Houston is not zoned. Therefore, it is in the City's interest to help with the enforcement of recorded deed restrictions for the protection of persons who purchase property in restricted subdivisions, for the benefit of all residents, citizens, and taxpayers of the City, and to promote the health, safety, morals, and general welfare of the City. "NO-ZONING LETTER" available at: www.houstontx.gov/planning/DevelopmentRegs/nozoning.pdf

Q2: Is there one set of recorded deed restrictions for the entire City of Houston?

A2: No -- deed restrictions adhere to subdivision lines. Example, the recorded deed restrictions for Oak Forest subdivision are valid for only those lots located within the platted area of that particular subdivision. Also note that within the platted subdivision, there could also be the possibility of different sections.

Q3: How do I get a copy of my deed restrictions?

A3: For most people living in the City of Houston, their property is located in Harris County, so please contact the Harris County Clerk's Office at (713)755-6411 and request a copy. They are located at 1001 Preston (Harris County Administration Building), fourth floor, downtown. If your property is not located in Harris County, then contact the clerk's office of the county where the property is located within (example: the Montgomery County Clerk's Office would be the custodian-of-records for deed restriction records for properties located in Montgomery County) and request a copy of the recorded deed restrictions. Each county charges a nominal fee for copies. A helpful hint - try and have the property's legal description (lot & block number, as well as the name of the subdivision where the property is located) when requesting the records.

Q4: Who can lodge a complaint regarding an alleged deed restriction violation?

A4: Any resident of the City of Houston can lodge a complaint with the Deed Restriction Enforcement Team - an individual, a neighborhood group, or a civic club representative. Please note that we will stay in contact with the complainant and if the matter goes to court, then we will request that the complainant appear as a witness for the City of Houston.

Q5 Does an abandoned vehicle qualify as a deed restriction violation that the Deed Restriction Enforcement Team can help with? How about a property that has an excessive amount of junk or debris on it?

A5: No -- however, these matters do fall under the City's nuisance ordinances and can be reported to the Planning & Development Department's Neighborhood Protection Team by calling 311. The citizen will be given a tracking number. To check on the status of such complaint, the citizen should call 311 again and relate the tracking number. To speak to Neighborhood Protection directly, a citizen may call 713.218.5500.

Q6: How much does it cost to have the Deed Restriction Enforcement Team pursue a complaint?

A6: $0 -- there is no fee charged.

Q7: After lodging a complaint, what further involvement is needed from the person making the complaint?

A7: The Deed Restriction Enforcement Team relies on the complainant to keep it informed as to the daily activity of the violation. And if necessary, when the City takes the property owner and/or tenant to court, the complainant will be asked to appear as a witness at trial for the City. See our section on what the City needs to prove a deed restriction violation for more detailed information.

Q8: Can an attorney from the Deed Restriction Enforcement Team give advice to a private citizen or civic club regarding interpretation of recorded deed restrictions? Is that same attorney available to directly help residents of a subdivision renew/revise/or extend recorded deed restrictions?

A8: No -- attorneys from the City's Legal Department may not give advice or offer an opinion (examples: interpret language in a legal document or provide advice on legal procedures) to private citizens or civic clubs. Individuals and organizations must seek out the services of a private attorney.

Q9: Is the amount of time that a violation has existed a factor in determining whether the City of Houston can pursue a property owner for violation of deed restrictions?

A9: Yes -- if the property in question has been in continuous violation of deed restrictions since prior to August 1965, then the City cannot pursue a lawsuit to enjoin (stop) the violation. However, if the violation started after that date, the City does have statutory (meaning it has been given to the City by the Texas Legislature) authority to pursue a lawsuit to enjoin (stop) the violation.

Q10: What is needed by the Deed Restriction Enforcement Team to prove that a violation of deed restrictions is occurring?

A10: Photographs, eyewitnesses, logs of activities, and documentary evidence are all examples. See our section on what the City needs to prove a deed restriction violation for more detailed information. We also have a downloadable activity log form that can be used by complainants.

Q11: How does the process work in regards to lodging a complaint?

A11: Once the Deed Restriction Enforcement Team receives a complaint, through the mail, from a Council Member, or on the Deed Restriction Hotline, it obtains (through its own title plant) copies of the recorded warranty deed and deed restrictions for the property where the alleged violation is occurring (this is where the City establishes who owns the premises, that the property in question has valid deed restrictions, and that the activity being complained about is in fact prohibited by the deed restrictions);

An investigation is performed (using the Deed Restriction Enforcement Team's own investigators and members of other City departments) to establish that the activity being complained about is in fact taking place*; and

The matter then goes before a staff meeting of attorneys from the Deed Restriction Enforcement Team where the recorded deed restrictions, evidence (or lack of), and other essential factors are examined. It is at this point in the process that the decision is made to (A) send the property owner / tenant a Notice Letter informing him/her that he/she is in violation of the recorded deed restrictions, (B) send the original complainant a letter stating that the file will be closed and the corresponding reasons, (C) or that the matter needs further investigation. Before a lawsuit is filed against a property owner / tenant to enjoin (stop) him/her from violating the deed restrictions, the file is again taken to a staff meeting to ensure that there are sufficient witnesses (these can be neighbors affected by the activity, City investigators, or others with first-hand knowledge of the violation), and supporting evidence.

- Please note that any assistance from the community (this could be the original complainant, the local civic club or homeowners' association, or any individual living in the affected subdivision) is greatly appreciated and an essential part of the Deed Restriction Enforcement Team's investigation.

- **Please contact the Deed Restriction Hotline at 713.437.6769.**

(GSP-10.WPD, 7-05)