

HOSPITALITYLAWYER.COM PRESENTS

**2013** THE **HOSPITALITY LAW**  
**CONFERENCE**  
FOCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS

FEBRUARY 11-13, 2013 • HOUSTON, TEXAS

**DEFINING 'EMPLOYEE' – THE MANY  
SHADES OF GRAY IN THE EMPLOYMENT  
RELATIONSHIP: PRACTICES,  
DEVELOPMENTS, PITFALLS AND  
SAFEGUARDS**

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# FREQUENTLY ASKED QUESTIONS

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- Represents management in complex federal and state employment litigation and counseling.
- Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization since 1984.
- Listed in: Chambers (Los Angeles and Dallas) since 2003-2012; Best Lawyers in America since 1995; Texas Super Lawyer since 2003; California's Top 50 Labor and Employment Lawyers, 2010; The Nation's Top 100 Most Powerful Employment Attorneys, 2009.

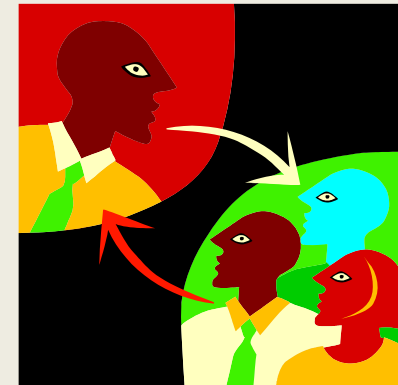
# FREQUENTLY ASKED QUESTIONS

## 1. Defining “is.”

- A. Statutory Definitions of Employee/Employer
- B. Multi-Factor Tests
- C. Control Factors
- D. Inconsistent Results

# FREQUENTLY ASKED QUESTIONS

2. Major tests for employee status versus contractor, employee of contractor, co-employee, joint employer's partner, service provider.



# FREQUENTLY ASKED QUESTIONS

## 3. Why important now?

- A. Plaintiffs' Bar
- B. DOL Initiative
- C. IRS Focus
- D. Courts
  - Supreme Court
  - State Court
- E. No Where to Hide

# FREQUENTLY ASKED QUESTIONS

4. What is the impact and the risks of an employee status issue?

# FREQUENTLY ASKED QUESTIONS

## 5. Counting Who Counts

- A. Payroll Method
- B. Who Counts for Damage Thresholds
- C. Aggregating Employees
  - Affiliated Companies
  - Co-Employers
  - Joint Ventures
  - Location Issues

# FREQUENTLY ASKED QUESTIONS

6. Discuss the pros of the use of temporary services' employees, workers or independent contractors in the hospitality sector.



# FREQUENTLY ASKED QUESTIONS

7. What about the perennial employee and independent contractor issue?

# FREQUENTLY ASKED QUESTIONS

8. What job positions are particularly at risk in hospitality industry?



# FREQUENTLY ASKED QUESTIONS

9. What are the concerns in dealing with temporary services and staffing companies?



# FREQUENTLY ASKED QUESTIONS

10. What is difference between Temporary Assignment on Location and Borrowed Employee?

# FREQUENTLY ASKED QUESTIONS

11. What can I do to manage risk in the use of workers classified as independent contractors?



# FREQUENTLY ASKED QUESTIONS

12. How can hospitality companies maintain their high level of quality and service to guests and patrons without over-managing independent contractors and transforming them into employees?



# FREQUENTLY ASKED QUESTIONS

13. What are the employer's obligations to investigate and remedy workplace misconduct of or involving employees of an independent contractor if the alleged conduct occurs on the employer's property?



# FREQUENTLY ASKED QUESTIONS

14. California often leads the country in “new” issues. What are the California quirks?



# FREQUENTLY ASKED QUESTIONS

15. I'm worried about wage and hour issues, any special concerns?



# FREQUENTLY ASKED QUESTIONS

## 16. YIKES, what about benefit coverage?



# FREQUENTLY ASKED QUESTIONS

17. Background checks – can (and should) a company conduct background checks on non-employees working with customers or employees?

# FREQUENTLY ASKED QUESTIONS

18. Any special concerns of using independent contractors in a union house?

# FREQUENTLY ASKED QUESTIONS

19. Any issues complicated by the Affordable Care Act mandates?

# FREQUENTLY ASKED QUESTIONS

20. What is the best practice to convert contractors to employees?

# FREQUENTLY ASKED QUESTIONS

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## Other Questions and Answers