

WORD ON THE STREET

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"The way to get started is to quit talking and start doing."

- Walt Disney

Dog Days Are Here

By Charles J. Esposito, Esq.

GREETINGS AND SALUTATIONS!

Welcome to the sixth issue of *Word on the Street*, the semi-occasionally occurring newsletter from the Taft Street Law Firm.

Growing up in Connecticut, I was never a fan of the cold weather or the snow. Sure it looked beautiful, but then I would step outside and immediately regret my decision.

College in Boston was slightly different as there was little foliage for the snow to stick to. Winter days were mostly unbearable, especially when using public transit.

One of the main reasons I chose to go to law school at Pepperdine was so I did not have to experience the cold weather again. Making the transition to Florida was another natural step.

As I sit here writing this, it's about 90 degrees outside. My friends in Connecticut always ask how I deal with the Florida summer heat. My response is always the same - "The same way you deal with Connecticut summers." It's 85 degrees out in Connecticut today. No regrets.

Onward!

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Can I Trademark That?

By Charles J. Esposito, Esq.

The USPTO defines a trademark as a word, phrase, symbol, or design, or combination thereof, that identifies and distinguished the source of the goods of one party from those of others. A company's logo, for instance, can be trademarked and no other company can use that logo to sell their goods or services.

Also, a company can trademark a slogan, and no other company can use that slogan in conjunction with their goods and services.

Trademarks, Copyrights, and Patents

A trademark is different from a copyright or a patent. Copyrights protect original artistic and literary works. Patents protect inventions. Trademarks and copyrights are not *required* to be registered for protection, whereas patents must be registered. Although there are common law trademark protections, the best way to protect a mark is by getting it registered federally.

What Can Be Trademarked?

A slogan or logo can be registered if (1) there is no likelihood of confusion and (2) it is distinctive.

Likelihood of Confusion

If your proposed trademark looks or sounds similar to another company's trademark, it is likely to cause confusion. However, if your goods or services are in a completely different field than the other company's goods and services, you might still be able to register your trademark. *Even the same mark.*

Distinctiveness

Trademarks are either fanciful, arbitrary, suggestive, descriptive, or generic. Fanciful marks are usually made up terms that have no meaning outside the use for your company. Arbitrary marks use a word or image that has nothing to do with the product. Suggestive marks suggest what the goods or services might be, but do not describe them. Descriptive marks do indeed describe the goods and generic marks are the common every day word for the product. Descriptive and Generic marks generally cannot be protected.

Example: Q-Tip® is a fanciful mark whereas "cotton swab" is the generic term used. The owner of the trademark Q-Tip® goes through great lengths to protect their trademark from becoming generic.

For more information on getting your trademark registered, call us at (833) TAFT-LAW.

"The right to adopt and use a symbol or a device to distinguish the goods or property made or sold by the person whose mark it is, to the exclusion of use by all other persons, has been long recognized by the common law and the chancery courts of England and of this country and by the statutes of some of the states."

- Justice Samuel F. Miller
Trademark Cases (1879)



Employee or Independent Contractor?

By Charles J. Esposito, Esq.

The Fair Labor Standards Act defines an employee as “any individual employed by an employer” and “employ” as “to suffer or permit to work.” Not exactly a narrow definition. Over time the Department of Labor, IRS, states, and courts have tried to lay out various tests and attempted to define the difference between an employee and an independent contractor.

A Matter of Control

One measure most of the various tests agree on is that the definition of the relationship between a worker and an employer is a matter of control. The more control the employer has over the worker, the more likely the worker should be classified as an employee.

The IRS Common Law Rules analyzes 20 factors, the Department of Labor Economic Realities Test uses a 6 factor totality test, and the State of Florida uses a 10 factor test. In all three tests, the common denominator is the amount of control the employer has over the worker.

Consequences

If your company misclassifies an employee as an independent contractor, you could be liable to pay their unpaid overtime wages, unpaid taxes, unpaid insurance premiums, and in some cases, you can be held criminally liable.

If you are a worker who was misclassified, under the FLSA, you could be entitled to Back Pay, Front Pay, Interest, Compensatory Damages, Liquidated Damages, and Punitive Damages.

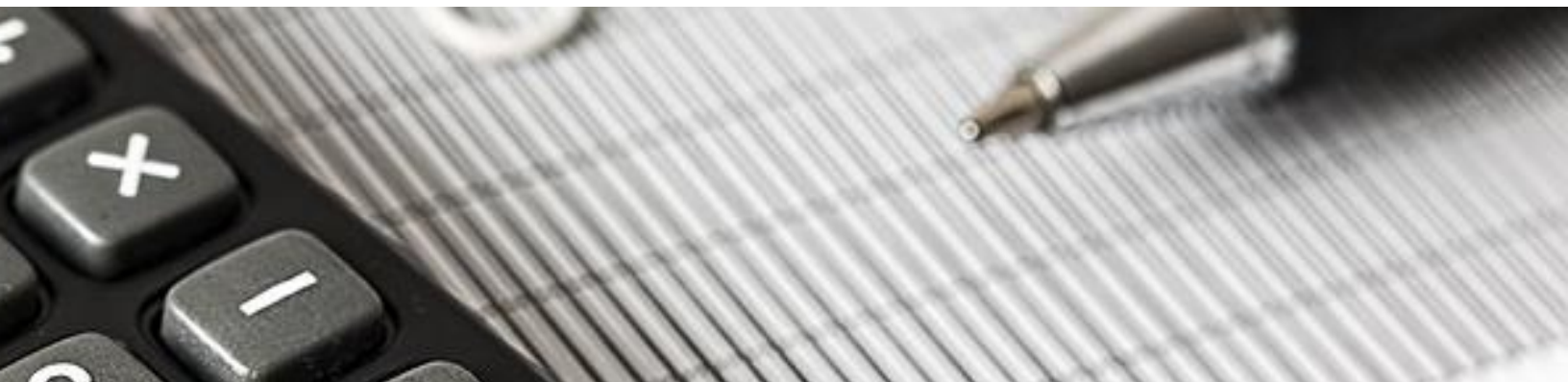
How to Determine Whether a Worker is an Employee?

Florida has an [Independent Contractor Analysis Form](#) that you can download and read to understand the types of questions courts are looking to resolve in these cases.



“Congress necessarily had to create practical and simple measuring rods to test compliance with the requirements as to minimum wages and overtime compensation. It did so by setting the standards in terms of hours and hourly rates.”

- **Justice Frank Murphy**
U.S. v. Rosenwasser



Employee Handbooks

Taft Street Law Firm

Many companies operate without straightforward guidance for their employees. While it may be arduous for most small businesses to create their own employee handbooks, the lack of formality and rules within their business makes it more difficult for them to operate on a day to day basis.

Further, if you ever want to scale your business or sell it, not having clearly defined corporate structures in place will hurt the value of your company.

Let Taft Street Help You

Our [Virtual Corporate Counsel](#) services include a variety of different products including Employee Handbooks.

Defining your policies and procedures seems like a daunting task, but by implementing a more comprehensive approach, you can turn a company weakness into a strength.

Contact us if you'd like to get control of your administrative business operations.

Future Endeavors

By Charles J. Esposito, Esq.

NEW AND EXCITING TIMES!

The Taft Street Law Firm is continuing to move forward in its mission to provide quality legal representation to our clients.

Be sure to visit our website at TaftStreetLaw.com, where we have more information including a presentation on [Worker Misclassification](#). Thank you for reading and please do not hesitate to contact us if you need any help.



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"There is little success where there is little laughter."

- **Andrew Carnegie**

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