



As Microsoft Goes, So Goes the Nation...

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In today's economy, the old saying, "as General Motors goes, so goes the nation," is more insightful with Microsoft substituted for GM. In the past two decades, the knowledge sector has supplanted manufacturing as the lifeblood of America and intellectual capital, not industrial process, has created strategic advantage. This was underscored by the recent ruling against Microsoft on an issue confronting most businesses: the classification of independent contractors.

In the knowledge sector, the decision by the US Court of Appeals against Microsoft was chilling. The federal court ruled that hundreds of workers Microsoft had classified as independent contractors were common law employees and therefore eligible for participation in the company's 401K and stock purchase programs. This ruling stood on appeal, which sent another shudder through the business world.

The implication of these decisions is that any independent contractor may be entitled to benefits, but, that interpretation is too simplistic. It appears that Microsoft did misclassify workers; they violated the truest test of employee status — the right to control. Contract employees designated as independent contractors were closely supervised by Microsoft employees and did the same routine work as employees in the same offices with the same badges.

When they were cited by the IRS in 1990, Microsoft changed its practice and ran these contractors through temporary agencies. Some refused to become temporary employees, prompting the lawsuit which led to the recent decisions. Microsoft made a mistake, and like GM, tried to reverse it, but "the recall" did not work.

The primary lesson here is: don't misclassify workers. This is problematic in today's virtual economy where an independent contractor could be any knowledge worker from the Chief Financial Officer to a programmer. Managers need to understand the regulations, ambiguous as they are, and use "just-in-time" workers appropriately in areas where precise expertise, transitory needs, or project orientation warrants non-permanent status.



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Also, take steps to ensure that all managers understand the liability implications of independent contractors; a classification problem can develop because a line manager treats a contractor like an employee. The line must know the law.

If you need a long-term contracting relationship, choose the right partner to be the third party agent. The downfall of Microsoft was that some of the contractors wouldn't be employed by a temporary agency. A third party who caters to independent contractors, addressing their specific financial and tax position, could have been a more amenable choice.

The use of independent contractors to enable operating resilience is knowledge leverage as potent as any financial leverage. It would be unfortunate to think this growing virtual knowledge market would be stunted by fear rippling from the Microsoft decisions. This impacts not only this spot market in virtual talent, but the livelihoods of individual independent contractors who have made this a career choice. Challenges to this virtual marketplace threaten the potential of these mavericks to pursue their entrepreneurial goals, goals which strengthen our digitally paced economy.

The bottom line is that companies involved with independent contractors need not panic and abandon this vital, virtual resource reservoir. They must manage these contract talents appropriately, understand the regulations, and choose the right partner to employ any questionable contractors. Additionally, we must understand that new legislation is needed. To have ambiguous regulations fell the mighty knowledge giant Microsoft underscores the need for action. As the chairman of GM once said, "what's good for GM is good for the country." By extension, what's good for Microsoft—the rationalization of independent contractor regulations—would be good for the nation.