

Are you Properly Classifying your Caddie?

A common and reoccurring problem that private clubs encounter is the proper classification of caddies and other club workers. Clubs often classify caddies as independent contractors when in actuality the relationship between the club and the caddie should be that of employer/employee. Since a worker classification determination is fact-specific, there are many pitfalls that clubs should keep in mind in making this determination.

AVOID PITFALLS IN CADDIE MISCLASSIFICATION

By Thomas A. Lenz, Esq. and Cindy S. Arellano, Esq.

Misclassification of caddies (or in fact any workers) can result in substantial liability for clubs. Such liability can arise in many ways, including through a claim by the caddie that he or she is entitled to benefits provided to the club's employees, a wage and hour claim by the caddie, a union organizing campaign involving club employees, or through an assessment against the club following an audit by either a governmental agency or the club's workers compensation carrier.

Recently, governmental agencies such as the Internal Revenue Service (IRS), Department of Labor and state taxing agencies have been aggressively taking enforcement action against employers with respect to worker classification issues. In fact, the National Labor Relations Board has asserted that the mere act of misclassification is an unlawful deprivation of employee rights under federal labor law. As such, worker classification has become an extremely hot topic, both within and outside the club community.

Classification Test

With the increasing focus on worker classification issues, it is advisable for clubs to review their treatment of their caddies. As part of its review, club management should first become familiar with the IRS's three-pronged worker classification test in which the IRS focuses on three main categories: behavioral control, financial control and the relationship between the parties.

With respect to behavioral control, the IRS will consider whether a club controls (or has the right to control) what the worker does and how he or she performs his job. If the club controls or has the right to control how the services are performed, the worker will most likely be considered to be a club employee. In looking at financial control, the IRS will look at whether the worker has a significant financial investment in his or her business accompanied by the opportunity to generate a profit or loss from the business. Finally, the IRS will consider whether there are written agreements in place between the club and the worker indicating intent as to the status of the worker, and how the club treats the worker with respect to its benefit plans.

The first prong of the IRS test, i.e., behavioral control, carries a significant amount of weight in the context of caddies, who do not generally have a significant financial investment or risk of loss in connection with their business activities.

The following are some "best practices" for a club to follow if it treats its caddies as independent contractors:

- **Set own schedule.** Caddies should be allowed to set their own hours and work days. A schedule that is imposed by the club, by which a caddie is required to abide, can be problematic.
- **Members choose caddies.** It is preferable for club members to choose their own caddie. While clubs will generally have an ordered list of caddies to be utilized if a member has no preference as to caddies, members should first be asked which caddie they would like to use.
- **Declining services to a member.** Caddies should have the option to decline providing caddie services to a member. The right to reject an assignment is a key component of an independent contractor relationship.
- **Setting rates.** Caddies should set the rates for their services. The general rule is that independent contractors should negotiate their rate of pay directly with their clients. Whether the club or caddie sets the rates to be charged is one of the key factors the IRS considers under its behavioral control test.
- **Payment directly by members.** Members should pay the caddie directly.
- **Reimbursement of expenses.** Clubs should avoid reimbursing caddies for their expenses.
- **Training.** Clubs should avoid providing specific instructions or training to caddies as to how to perform their services. Required meetings for caddies should also be avoided.
- **Attire.** Clubs should avoid requiring caddies to wear uniforms or clothing with a club logo. General dress and grooming standards can in certain cases be acceptable, but a requirement that uniforms be worn by caddies is problematic.

Two Alternatives to Classifying Caddies as Independent Contractors

By Phillip Mike

Classifying Caddies as Employees

At Preston Trail Golf Club in Dallas, the club's 45 caddies are classified as part-time employees. The caddies are paid an average of \$25 per hour and do not receive tips. From August 2016 to September 2017, they worked 5,315 rounds.

As employees, Preston Trail maintains full control of the caddies. An outside service manager or senior-level caddie trains the caddies. Caddies are required to wear a club-logoed golf shirt, shorts, hat and bib—all provided by the club. The supervisors pair caddies with golfers and assign loops. All supervisors are full-time employees, receiving salary and benefits from the club.

Classifying the caddies as employees has been beneficial to the club. Of most benefit, the club can hire, train, discipline and require a uniform for the caddies. The decision to make caddies employees has full club support, including the board, and has seen no drawbacks. Caddies are charged to members' accounts just like a cart fee. Most members have not noticed a difference between the caddies being treated as independent contractors versus employees. While the club has control over the entire caddie program, general manager Curt Kelley, CCM, attributes much of the success of Preston Trail's caddie program to its strong management.

Hiring a Third-Party Vendor

For the last 17 years, River Oaks Country Club in Houston has used a third-party vendor, CADDIEMASTER, to manage its caddie program. The caddies work 6,500 rounds per year, and all compensation excluding some cash tips are controlled by CADDIEMASTER. The vendor also conducts all training at the club, taking the caddies on several loops to learn the course and its nuances. The vendor also provides two caddie master positions to supervise the caddies and assign loops.

Caddies are provided each day based on the number of member requests. The caddies generally arrive early in the morning and report to their designated caddie area. They also have their own locker room and are provided a uniform by the vendor.

Using a third-party caddie vendor costs roughly the same as hiring individual caddies. However, the added challenge of training, managing and paying them is all taken care of by the vendor, easing the burden on the club and allowing the club's golf professionals to focus on their primary duties. This system also lets the club be flexible with the number of caddies it uses. During tournaments and busy season, River Oaks can request more caddies with just a phone call. The program enjoys the overall support of the club, its board and members.

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- **Personal conduct standards.** Clubs should avoid policies that impose particular rules on caddies that differ substantially from those grooming, dress and personal conduct policies that apply to all individuals, members or otherwise, who are on club premises.
 - **Performance of club duties.** Avoid having caddies perform general club-related duties such as cleaning. Services that are being provided to the club, as opposed to the members of the club, are indicative of an employer/employee relationship.
 - **Outside services.** Caddies should be free to provide services elsewhere, including at other golf clubs.
 - **Benefits.** Clubs should not provide employee benefits such as sick leave, vacation pay or 401(k) participation to any caddie treated as an independent contractor.
 - **Written agreement.** Clubs should enter into a written independent contractor agreement with caddies and have that agreement carefully reviewed by legal counsel to confirm that it puts the club in the best position possible if the caddie's status as an independent contractor is challenged.
 - **Evidence of independent business.** Whenever possible, it is helpful if the club has obtained evidence that the caddie considers himself or herself to be operating an independent business. Such evidence can be through business cards, the formation by the caddie of a limited liability company or corporation through which the caddie services are provided, or otherwise.
- Cases that have found that an independent contractor relationship exists between a club and its caddies generally

involve arrangements where the caddies are paid directly by members, set their own rates, receive no other compensation directly from the club, set their own schedule and work days and take their direction from the member as opposed to from the club.

Alternatively, when a club establishes the caddie's pay rate, supervises caddie attire, imposes rules of conduct on the caddie and is the sole source of a caddie's revenue, it is likely that the caddie may be considered to be an employee. In general, the greater the level of control that a club exercises over its caddies, the more likely that the caddie will be considered to be an employee as opposed to an independent contractor.

Because of the substantial liability that can arise when caddies and other workers are misclassified as independent contractors, clubs should carefully review their relationship with their caddies and other persons considered to be independent contractors, clubs should consult legal counsel and provide as many

details as possible to make a thorough determination of whether to treat a caddie as an independent contractor. **CD**

Editor's note: NCA will release a new monograph on independent contractor compliance in early 2018.

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