

## **Employee or independent contractor (IC)?**

### **One factor is critical**

**The case:** MTC was a spa offering the services of nail technicians, massage therapists and cosmetologists. MTC treated them as ICs, but its receptionist and a massage instructor as employees. The IRS said they were all employees and assessed taxes and penalties. The case went to court.

**The decision:** For the taxpayer. Among the 20 factors used to decide if workers were ICs, the spa cited the following: The disputed workers received no set salary, wages or fringe benefits; paid weekly fixed rent or percentage of their gross for the week; provided their own equipment and materials and set their own hours, which they could change at will and paid for their own travel and lodging. They also paid for their licenses and professional education. The spa never paid payroll taxes or filed W-2s for them. The spa said these factors made them ICs.

The IRS offered the following as proof that the workers were employees: Their services were integrated into spa operations and provided mostly—often entirely—on the spa's premises. The spa facilitated their services through ads and special offers, booked appointments, collected fees for their services and retained the revenue until distributing it in weekly checks to the workers. The court said it was a close call, but more factors indicated that the workers were ICs than employees.