

## **Allstate Insurance Agents - Employees or Independent Contractors?**

Agents under contract with Allstate Insurance Company have been classified by the company as independent contractors since 2000, when Allstate forcibly converted over 6,000 employee agents to independent contractor status. However, the job description of these converted 'independent contractor' agents is fundamentally identical to that of the former employee agents. This massive worker reclassification effort appears to have been engineered solely to profit from certain tax-advantaged strategies while simultaneously disregarding the generally accepted principles of independent contractor status.

### **Allstate has been advantaged in the following areas:**

- Federal, state and Social Security taxes
- State and federal unemployment compensation
- Worker's compensation
- Discrimination laws - in particular, age discrimination
- Civil rights laws – workers can be denied employment or fired without reason
- Elimination of employee benefits for agents which are afforded to other Allstate employees
- Elimination of further contributions to the Agent Pension Plan

Utilizing the IRS's Twenty Factors and Three Categories of Control, the following is an outline of facts that indicate an employer/employee relationship does indeed exist between Allstate and its agents.

### **Behavioral control**

Allstate exercises extensive control over the agent, the time and place of his work, the method by which the work must be done, and the amount of work that must be accomplished.

### **When and where to do the work**

Agent's office location must be approved by the company. The office is required to be open a minimum of 9:00 AM to 5:00 PM Monday through Friday. Holiday office hours are strictly controlled and agent offices must not be closed on any day or at any time, unless specifically approved by the company. As an example, the company requires that agent offices be open for business the day after Thanksgiving. Agent locations are monitored for their compliance with these requirements.

All telephones used to conduct Allstate business must be "forwarded" to company call centers after 5:00 PM and on all company holidays, regardless of the agent's availability to his Allstate customers via cell phone or home phone. Failure to comply with mandated office hours, the company's required holiday schedule and phone forwarding requirements can and does result in termination of the agent.

### **Instruction and training**

Allstate routinely provides instruction and training that is mandatory for all agents. This includes training meetings, communications on the company intranet site, Webinar meetings and subjection to company-hired "mystery shoppers," who randomly gauge agent compliance with company-authored scripts by calling unsuspecting agents. These calls are recorded by the vendor(s) and are reviewed by company management. The agents are then evaluated and are rebuked for failing to follow company scripts.

In addition, agents receive specific instruction on how to perform nearly every aspect of their work. For example:

### **Agent Tasks:**

- Quoting new customers –
- Reviewing existing policies

### **Company Method to Accomplish Tasks:**

- “Care, sell, quote”
- “Good Hands Coverage Checkup”

- Answering the telephone                      First Impressions Call Program
- Explaining Rate changes                      “Premium Straight Talk”

Training is ongoing, and agents are routinely forced to attend sessions regarding new marketing schemes, complaint handling, claim handling and new products. Agents are routinely supervised by Allstate managers and receive ongoing performance reviews on recorded phone calls, compliance with mandatory phone forwarding, quote to sales ratios, deficiency of achieving quotas, and a variety of other measurements of performance. A formal *Agency Status Review* is conducted with the agent once a year. This review is nearly identical to the employee review that was used prior to the reclassification of the agents.

Failure to comply with attendance at mandatory meetings, or mandatory work instructions may result in additional mandatory training, or termination of the agent.

### **Oral and Written Reporting**

Agents are routinely requested to contact their manager with various reports including number of outgoing calls made, number of appointments secured and production results. Reporting frequency can be as often as daily. With new technology, many of the reports required of the worker have been automated, and are provided to company management via electronic means. Management has access to these mechanized agent reports, without consent or authorization from the agent. These reports measure virtually every aspect of the worker’s performance, which are then compared with other workers in the territory. The results are often shared with other workers as a means to exhibit the worker’s comparative ranking with other workers in his peer group. This practice is done without the worker’s consent or authorization.

### **Right to discharge/Right to terminate**

The agent contract provides that either party may terminate the contract by mutual agreement, or with 90 days prior written notice.

### **Quotas**

The agent contract specifies that the agent will act as an agent of the company for the purpose of soliciting, selling and servicing insurance for the company. The end result of the task is the issuance of an insurance policy for a customer. The agent who has successfully completed the task is theoretically performing the job he was contracted to do.

Allstate controls virtually every aspect of the agent’s performance by dictating the manner in which these tasks are completed. In addition, the company dictates the quantity of policies that must be sold each calendar year in order to comply with requisite quotas. Failure to meet the requirements outlined in the four categories referred to as RFG (Resources for Growth) can and does result in termination of the contract. RFG requirements are presented to the agents at the beginning of each calendar year. Extensions of time to meet the required quotas are not considered, regardless of market conditions or other factors, including serious illnesses, which can adversely affect the agents’ ability to achieve these compulsory objectives. Also not considered is the impact of negative publicity created by Allstate’s own behavior in the marketplace.

### **Services rendered by the agent versus assistants**

Although Allstate allows agents to hire licensed assistants, these workers must be approved by Allstate prior to being appointed by the company with the respective departments of insurance. In most circumstances, Allstate requires that the assistant, who is hired by the agent, be trained by Allstate prior to approval. This scheme appears to be another cost saving effort by Allstate, allowing it to avoid taxes, benefits, and employment laws pertaining to these workers. (It should be noted that unlicensed staff do not require company approval or company training because they do not perform work that requires specific instruction. These workers are primarily used to answer the phone, file documents and perform other basic office offices duties.)

The agent is ultimately responsible for the work performed by the assistant, yet the company routinely strong-arms the agent into terminating an assistant in order to avoid his own termination in situations where the company deems the assistant to have violated company policy in any way. The agent is also expected to be actively involved in the operation of the agency.

**Continuing Relationship; Ability to provide services to the relevant market; ability to work for more than one firm at a time; Serving the general public.**

Allstate agents perform work implicitly for Allstate. The relationship is continuous. Allstate engages the agent with the expectation that the relationship will continue indefinitely, as Allstate agents continue to provide service to the policyholders they secured as new business. Unlike true independent contractor insurance agents, captive Allstate agents are prohibited from performing their profession with any other insurance carrier unless explicitly approved by Allstate. This only occurs on rare occasions where Allstate does not want to underwrite the type of insurance coverage being offered by the other carrier. Allstate Agents receive a 1099 Miscellaneous Income statement for income they earn from Allstate business. The 1099's agents receive from Allstate typically exceed 95% of their total insurance-related incomes in any given year.

Unlike a true independent contractor insurance agent, Allstate owns the renewals of the policies written by its captive agents. Independent agents, on the other hand, own the policy renewals of each carrier they represent, allowing them to move large blocks of business from carrier to carrier when necessary. If an Allstate agent decides to represent a different company, all the policyholders he has secured from his Allstate business are lost, and he must terminate his Allstate contract and start all over again from scratch.

Allstate agents are subject to a non-compete, non-solicit agreement that forbids them from soliciting the sale of insurance products for one year within a mile of their former Allstate location.

**Financial Control**

Allstate requires the agent worker to pay for business expenses such as office rent, utilities, phone and staff. When the agents were employees, the company provided an "Office Expense Allowance" equal to 1.6% of the agent's gross property-casualty premiums to help offset the agent's office expenses. Most of the agent contracts in effect at the time of conversion paid property-casualty commissions at the rate of 15% on new business and 6.5% on renewal.

Today, the property-casualty commission rate is 10% new and renewal in all states except New Jersey. The 1.6% "Office Expense Allowance" was discontinued once the agents were converted to 'independent contractors' status. However, the company now offers a bonus for agents who can qualify.

Until very recently, Allstate provided captive agents with computer and phone equipment for the operation of their agencies. Beginning in 2008, the company began requiring agents to purchase this equipment themselves. However, Allstate still provides agents with a technology allowance to help offset the cost of the new agent-owned equipment.

Aside from the promise that agents would become their own boss as independent contractors, the factor that persuaded many agents to convert to the independent contractor program was the assurance that they would own an "economic interest" in their books of business. This was touted to agents as a replacement for the company pension, which was discontinued when the agents were all terminated. Agents were told that they could sell this economic interest to any "qualified buyer." At the time, the company declared, "any Allstate agent is a qualified buyer," which allowed agents to buy books of business from other agents who decided to leave the company. And while it sounded too good to be true, this option convinced many skeptical agents to convert to the new independent contractor program.

In contrast, today there are only a small percentage of agents, perhaps 10%, who can qualify to buy a book of business. The company would prefer agents to sell their economic interest to “outside buyers,” who have no prior experience with Allstate’s controlling culture. In addition, hundreds, if not thousands of agents will be forced to put their agencies up for sale, mostly because they are unable to meet production quotas. Many of these agencies will likely be taken over by the company at fire sale prices due to the implementation of unreasonable buyer qualifications. It should also be noted that Allstate agents invest large sums of money in their agencies to grow their businesses. When an agent cannot sell his agency at a fair market price, these ‘investments’ are lost.

Allstate maintains complete control over the approval or denial of a potential buyer. The guidelines for qualification are subject to company discretion, and are changed frequently. Buyer approval is routinely denied without providing a reason to the selling agent.

### **Contract**

Allstate agents are contracted to sell and service Allstate Insurance policies. They are governed by a written contract that expressly incorporates additional documents into the contract. These contract additions are frequently amended by Allstate. These unilateral revisions to the worker contract allow Allstate to change the products the agent is required to sell, as well as all other aspects of the worker’s job.

Agents are provided with minimum quality and quantity standards that must be met. These standards involve multiple product lines and are ever-changing. Failure to achieve the specified quotas results in the termination of the agent.

As mentioned above, the agent contract includes a non-solicit, non-compete clause.

### **Services are a key aspect of the business of the company**

The work of the agent is a key aspect to the business of Allstate. Allstate directs and controls the agent by presenting the agent with the work, directing the manner in which it is completed, as well as the quantity that must be produced each year in order to maintain the agent’s contractual relationship with the company. Agents are paid monthly for the work accomplished during that month. Failure to maintain company-specified hours and days of operation; failure to utilize the company proscribed methods of doing the work; and failure to achieve the appropriate level of sales and growth at least every other year will result in agent contract termination.

### **Summary**

Allstate has developed and implemented an elaborate system which has evaded the financial burdens of an all-employee agent work force without giving up the complete domination and control of its workers. Until now, it has managed to avoid scrutiny by the IRS and various state agencies.

Additionally, the company has recently been able to circumvent age discrimination laws and unemployment benefits as it systematically terminates hundreds of older, long-term agents for their failure to meet required quotas. The terminated workers are not eligible for unemployment benefits, or age discrimination claims because they have been mislabeled as ‘independent contractors’ by Allstate, which is clearly not the case.

For additional information, or documentation on any of these areas, please contact:

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