FMS Open Forum
3504 Section 2

Questions & Answers from the Member Forum

April 11, 2013

To view the webinar recording, click here.

Please email membership@participantdirection.org if you have any questions regarding this document.

Q: With regards to this standard 3504 you have the 2678, were you suggesting that there would be some agreement form to substantiate the relationship to then operate under the 3504-2?
A: *(Mollie, FMS Lead)* If you were doing a 2678 already you don't have to worry section 2. In order to quality under this section 2, the IRS says there needs to be some sort of service agreement between a payor and a user of workers (employer or co-employer of workers. This agreement can be verbal or written, so the payor would need to assert that they are the employer and that they would be handling all of the taxes and wages.

Discussion:

- In Minnesota we already have Participant Agreements in place for AWC and we assert those 3 points in that agreement already and we support the rule to add protection to participants.
- The IRS didn't issue rules in response to PD, but staffing industry issues.
- More protection for the consumer is a good thing. I would hope most AWC's are doing this already anyway.

Q: Which states currently use AWC and did their experience influence this rule?
A: *(Mollie, FMS Lead)* AWC is used less often then FE/A. It's used in MN, not currently used in MA. After the call we will send out some information on where it's used.

Q: How does this addition to the rule affect the ACA? If they come back and say that the participant was the common law employer and the person responsible, are they the one responsible for the insurance vs. the AWC?
A: *(Mollie, FMS Lead)* This rule will most often be used to find someone to be an agent which wouldn't necessarily impact them to providing insurance. Where the IRS applies common law rule that is absolutely a good point because with the ACA because through the ACA you would also apply to common law rules when you determine who the employer is for purposes of needing to provide the health insurance coverage. If common law rules are applied and the participant is determined to be the employer and the participant has fewer than 50 employees, then they don't have to provide the health insurance coverage. The problem that we get into with who's the common law employer and with the ACA with the common law employer, the IRS says they will determine who the employer is on a case-by-case basis and it only comes up when there is an issue and they are examining a case. The best you can do is take the common law test and try to apply it yourself.

Discussion:

- I am curious to see if they will somehow end up tying it back to each other.
- So precedence making the co-employer responsible for the insurance; applying agent rule for the health insurance. That's a good point and something to think about.

Q: Could you talk about Public Authority?
A: *(Mollie, FMS Lead)* Public authority has been used when a union is in place and a public authority is brought in place to be used for only purposes of collective bargaining