



### Are your workers independent contractors or employees?

By Rich Jungman, Vice President—Client Advocacy and Operations, Willis HRH and initiate of Phi Sigma Kappa

Are your workers independent contractors or employees? The answer can have a profound impact on how much tax you pay as a small business owner. Knowing whether your workers are or are not employees will affect the amount of taxes you must withhold from their pay. It will affect how much additional cost your business must bear, what documents and information they must provide to you, and what tax documents you must give to them.

Employers who misclassify workers as independent contractors can end up with substantial tax bills as well as penalties for failing to pay employment taxes and failing to file required tax forms. Workers can avoid higher tax bills and lost benefits if they know their proper status.

Both employers and workers can ask the IRS to make a determination on whether a specific individual is an independent contractor or an employee by filing a Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, with the IRS.

Determining whether a worker is an employee or independent contractor is largely dependent upon the amount of control you as a business owner have over that worker. Many fraternity and sorority housing corporations employ the services of individuals needed to fulfill their mission of providing affordable housing for undergraduate members. The most common are cooks and resident advisors/house parents. If you are a chapter that does, how do you classify them? As an independent contractor or an employee? In a number of cases, many house corporations have classified an employee incorrectly as an independent contractor.

In most cases it is an unintentional error in the classification, but at times it is done to avoid paying payroll taxes, unemployment and purchasing workers compensation. While such a classification can provide immediate savings, it can be a costly mistake in the long run. It can result in owing payroll taxes in arrears and substantial penalties for failing to pay employment taxes and failing to file the required tax forms. These penalties usually will apply regardless of whether it was an accidental or intentional error.

This can all be avoided by analyzing the situation and determining the proper status. Generally, whether a worker is an employee or an independent contractor depends upon how much control you have as an employer. If you have the right to control or direct not only what is to be done but also how it is to be done then your workers are most likely employees. If you can direct or control only the result of the work done, and not the means and methods of accomplishing the result, then your workers are probably independent contractors.

Let's analyze the responsibilities of a typical chapter employee, the chapter house cook. Is this type of worker an employee or independent contractor? There are many factors used to make a determination, but we will hit on the ones most applicable to a chapter cook:

**Instructions:** As most chapter house cooks are given specific

instructions by the House Corporation Officers or House Manager, this strongly indicates they should be classified as employees.

**Set Hours of Work:** The advantage most people who elect to be independent contractors realize is the freedom to work when they want. A chapter cook has no such luxury. Meals have to be served at specific times in accordance with the meal plan provided to your undergraduate members. They are not free to cook when they feel like cooking. Due to the degree of control over their work hours, they should be classified as an employee.

**Working on the Employers Premises:** For the chapter house cook, meals typically have to be prepared in the chapter kitchen. This level of control over where the work has to be completed, while not the lone determination, again indicates an employer/employee relationship.

In addition to owing back taxes and penalties, there are other pitfalls to misclassifying an employee. States enacted workers compensation laws due to the frequency of claims involving employers and employees resulting in numerous disputes arose over which parties' negligence was the proximate cause of the injuries. In effort to improve the efficiency of processing these claims and eliminate litigation, workers compensation insurance, a no fault type of insurance, was created. It required an employer to indemnify employees for medical expenses, lost wages and disabilities regardless of whether the employee's own negligence was the proximate cause of the injury. In exchange, workers compensation is the exclusive remedy for an employee to recover damages for a work related injury, which simply means if workers compensation is available to the employee, he cannot sue his employer even if the employer's negligence is the proximate cause of his injury.

If workers compensation is not available to an injured employee, not only does the employer face fines and penalties, but also the possibility of a civil lawsuit brought by the employee in an effort to recover his damages. The exclusive remedy of workers compensation is lost and in most states, an employee is allowed to sue his employer. Most liability policies exclude bodily injury claims brought by an employee of an Insured. The purpose of this exclusion is to ensure employment related injury claims are covered only under the workers compensation policy. As a result, the error in classification can result in a house corporation exposed to uninsured litigation, which can be very costly.

If you have a cook or house parent that you are classifying as an independent contractor, we strongly recommend you review your reasoning behind the classification. The IRS can assist you or you can seek the opinion of your attorney and/or insurance agent. In the end, the additional expense of payroll taxes, unemployment and workers compensation are relatively nominal in comparison to the cost of being wrong.



# Air Conditioning Thieves

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## HSB Urges Owners to Take Precautions as Criminals Strip AC Units of Copper

As the weather gets warmer, HSB is adding a warning to advice about getting air conditioning ready for the summer. You should protect cooling equipment from thieves who are stripping AC units for copper and other scrap metal.

### Metal Prices Spur Thefts

"With metal prices high and global demand rising, we are seeing more thefts of air conditioning parts and even entire units as thieves remove and sell the copper and other metals inside," said Ron Behrens, an engineer and air conditioning specialist with Hartford Steam Boiler.

### Feeling the Heat

A theft may not be discovered until someone notices a loss of cooling, only to find the outside condenser unit has been stolen. New construction sites are also targets. Using cordless drills, screw guns and saws, a thief can remove copper pipes and brass fittings in a few minutes, often leaving behind the compressor and cabinet.

### Little to Gain, A Lot to Lose

The metal is sold for cash at a recycling or salvage center. A typical commercial air conditioning unit might include 20 points of copper pipe with aluminum fins worth around \$3 to \$4 a pound at recent prices. The cost of repairs or replacing equipment, meanwhile, can be several thousands of dollars in addition to business interruption and the spoilage of food and other goods.

### Global Warming Threat

Then there is the environmental harm when ozone-depleting refrigerant is released into the atmosphere. Many commercial units use 20 or more pounds of refrigerant gas. Even a resi-

dential central air conditioning system may contain six pounds of refrigerant.

### Take Steps to Stop Thefts

HSB offers loss prevention tips to help owners when starting up and operating air conditioning equipment. Visit our website at [www.hsb.com](http://www.hsb.com), click on the Quick Links button and then Equipment Care to select a topic. Our specialists also urge owners to take these precautions to protect equipment from vandals and thieves.



- Install an audible alarm. For about \$200, alarms are available that can monitor refrigerant pressure and alert an owner when lines are cut or leak.
- A similar alarm is available that activates a siren when an attempt is made to move an outside AC unit.
- Wireless GPS products designed to discreetly monitor expensive items such as jewelry can also track air conditioning equipment if stolen.

- Even though thieves have stolen AC parts from locked areas, fences around units or roofs with gate locks can help deter many thefts. Keep in mind that poorly designed enclosures can impede service personnel and block air flow that is necessary for AC units to operate properly.
- Video surveillance equipment may also deter thieves.

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## Property Coverage Enhancement

Ned Kirklin, Managing Partner, Willis HRH  
and initiate of Kappa Sigma Fraternity

On April 13, 2006, the Sigma Chapter of Alpha Chi Omega at the University of Iowa suffered a devastating property loss due to a tornado. During the reconstruction of the property, it was discovered a local building ordinance that required an increase in the number of parking spots based upon the number of tenants the property could accommodate. Other local building ordinances also dictated the amount of green space and ground surface concrete that could exist. The House Corporation was provided two options to solve this problem. One option was to rebuild a smaller facility and accommodate fewer members. This was not acceptable to the Insured. The second option was to construct a two level parking garage to provide the required number of parking spaces to comply with the building code at an additional cost of approximately \$650,000.



Their property policy at the time provided coverage for increased cost of construction due to the enforcement of building codes. The interpretation by the property adjuster was that increased cost of construction coverage **only extended to previously existing and insured structures.**

In essence, regardless of the fact that Alpha Chi Omega had no option but to build the parking structure to meet the local building codes, the insurance carrier denied the claim due to the fact that the parking structure did not previously exist. Subsequently, Alpha Chi Omega has proceeded with construction of the parking structure at their own cost.

It is our belief that the ruling violates the spirit behind which the Increased Cost of Construction Coverage was developed. To eliminate any concern on the part of our clients we have worked with RSUI to modify the policy through an endorsement to specifically address this issue. A summary of the policy change to the Law & Ordinance Coverage Form is as follows;



*When a building is damaged or destroyed and **Coverage C** (Increased Cost of Construction) applies to that building we will pay the cost associated with the construction of new structures and/or infrastructure improvements on the insured premises that are required because of the enforcement of any ordinance.*

The local building code requirement faced by Alpha Chi Omega in Iowa City, IA is not an anomaly and the same issue exists on other campuses. An additional example is on the UCLA campus where due to very limited parking space in the area it is likely a house corporation would have to construct a parking facility during the reconstruction process of a chapter facility due to a property loss.

Willis HRH, in cooperation with RSUI Indemnity Company and the Fraternal Property Management Association, is pleased to announce this material coverage enhancement for the 2008 property insurance program. The negotiated coverage improvement addressed a number of our client concerns regarding the extent of coverage provided under the Law & Ordinance Coverage Form. The policy provides a coverage limit of \$500,000;

additional limits can be purchased. We are pleased to offer this change in coverage.

If you have any questions about this new coverage, please do not hesitate to contact Ned Kirklin, Managing Partner at (800) 736-4327, Extension 200, or [nkirklin@willis.com](mailto:nkirklin@willis.com)

*On October 1, 2008, Hilb Rogal & Hobbs, the parent organization of HRH/Kirklin & Co., LLC merged with Willis Group Holdings, one of the world's largest international insurance and risk management intermediaries. The focus of our organization will remain constant: **founded to serve the needs of college student organizations and alumni/ae associations and committed to improving the risk management programs and initiatives of our clients.** The transition to Willis HRH will be seamless to you other than new branding. Watch for emails from our team carrying "@willis.com" addresses, and visit our website at [www.WillisFraternity.com](http://www.WillisFraternity.com) or [www.WillisSorority.com](http://www.WillisSorority.com).*

## The Inspection Process: What to Expect

By Mick McGill, Senior Client Advocate, Willis HRH and initiate of Kappa Sigma

The inspection process is an integral aspect of your property insurance coverage with Fraternal Property Management Association (FPMA). There are three critical areas associated with your chapter's inspection:

Conduct an insurance review and consultation;

- Determine the acceptability of the risk; and
- Determine the reconstruction cost of the building to ensure it is adequately insured.

The process begins with a telephone survey completed by our Inspection Department. Items covered within the interview are confirmation of major facility updates, confirmation that the chapter contacts we have on file are current and discussion of the fundamental risk management strategies employed by the house corporation. During the phone interview, we will also conduct an insurance coverage review addressing potential uninsured/underinsured exposures as they pertain to the chapter's Business Personal Property (BBP) and Business Income/Extra Expense (BI/EE).

Shortly after the telephone survey, an on site inspection will be completed by an independent contractor hired by Willis HRH. The inspection is designed to identify hazards and other areas of concern that can potentially result in bodily injury or property damage. In addition, the inspector will confirm the building construction and mechanical specifications to accurately calculate the reconstruction value used to establish the required insured value for the building.

The information gathered through the telephone survey and inspection is then consolidated into a written inspection report and sent to the appropriate contact. Within the report, a list of compliance issues is provided to address potential hazards and other areas of concern aimed at making the facility safer for all members and guests. As a House Corporation officer, it is imperative that immediate attention and due diligence be given to properly address all compliance issues included in the report. If significant compliance issues need to be deferred or you have concerns relating to the findings of the inspection, feel free to contact and address those concerns with the Willis HRH Inspection Coordinator.

There are many pitfalls for failing to address compliance related issues identified during the inspection. First, failing to do so could jeopardize the safety of your tenants and create liability as it often demonstrates notice of a defect. Secondly, it can result in higher costs for surcharges and additional inspection fees. In some cases, it can result in the cancellation of coverage by the applicable insurance carrier. In the end, we encourage you to promptly address all pertinent issues as the cost of failing to address compliance issues commonly exceeds the cost of taking the appropriate action to ensure the facility is as safe as reasonably possible.



## Leave The Heat On!

### Protect your Facility over Winter Break

By Bobbi Larsen, Education Consultant, Willis HRH and initiate of Alpha Chi Omega



#### **What is the damage?**

- Freeze, water damage and vandalism claims are the most frequently occurring claims from November through March.

#### **Why did this happen?**

- Chapter members turned off the heat thinking they would save some money.
- The pilot light on the furnace blew out.
- No one was in charge of checking on the house over the holiday breaks.
- The chapter house was not securely locked making it an attractive target to vandals and thieves.

#### **No one got hurt, what is the problem?**

- Chapter members return from Thanksgiving and/or Winter break to a mess, or worse yet, no place to live because of the significant extent of damage.
- A significant deductible is incurred, causing further strain to an already stretched budget.
- Property premiums increase, because of these claims— which every member helps to pay!

#### **How do we avoid a repeat this year?**

- Turn the heat down to no less than 60 degrees; don't turn the heat off!
- Have a house corporation officer or undergraduate member stop by the house daily to make certain the house is secure, there has not been a loss and the heat is working!
- Spend a little money to save a lot of money not to mention avoid a hassle!
  - Have the furnace or boiler serviced this fall.
  - Fix all broken windows.
  - If a local undergraduate or alumnus can't be counted on to check on the house, hire someone to do it for you over the break.
- Call your heating contractor immediately if there is a problem with the furnace and take immediate action to prevent further damage.

It is important to also be aware of your outside property. To help reduce the risk of injuries to members, guests, or people passing by, make sure that snow is removed and ice is treated in a timely fashion.