

---

**From:** J <jeevacation@gmail.com>  
**Sent:** Friday, March 15, 2019 4:37 PM  
**To:** Darren Indyke  
**Subject:** Re: Privileged and Confidential

Yes

<=iv dir="ltr" class="gmail\_attr">On Fri, Mar 15, 2019 at 12:33 Darren l=dyke [REDACTED]  
[REDACTED] wrote:

To clarify regarding Decision Item 3. Do I exclude the Christmas bonus check stub and and las= payment check stub which references the loan repayment?

DARREN K. INDYKE

[REDACTED]

\*\*\*\*\*=\*\*\*\*\*  
\*\*\*\*\*  
The information contained =n this communication is confidential, may be attorney-client=A0 privileged, and is intended only for the use of the addressee. =t is the property of Darren K. Indyke. Unauthorized use,=A0disclosure or copying of this communication or any part th=reof is strictly prohibited and may be unlawful. If you have rec=ived this communication in error, please notify us immediate=y by return e-mail, and destroy this communication and all c=opies thereof, including all attachments.  
Copyright of Darre= K. Indyke - © 2019 Darren K. Indyke – All rights reserv=d.  
\*\*\*\*\*=\*\*\*\*\*  
\*\*\*\*\*

On Mar 15, 2019, at 12:25 PM, J <jeevacation@gma=l.com <mailto:jeevacation@gmail.com> > wrote:  
  
all ok

On Fri, Mar 15, 2019 at 12:04 =M Darren Indyke [REDACTED]  
[REDACTED] wrote:

1. Regarding the questionnaire to be returned to VI Department of Labor with respect to Kyle Steward. I know you approved the form, but I didn't like the large number of contractors stated on the document. Recall the document stated that there are 17 contractors and 21 employees in the same "class" as Kyle. I questioned Daphne further about it and learned that she included all workers paid as contractors and not just landscaper contractors. So, I revised it to change the number of contractors in Kyle's class from 17 to 4 and the number of employees from 21 to 6, which relates to the class of landscape contractors and landscape employees rather than all contractors and employees.

2. Also Chris Kroblin and I didn't like the reference to non-payment of taxes that Daphne and Jeanne originally provided in the questionnaire as one of the reasons to treat Kyle as a contractor. We changed the explanation as to why Kyle is a contractor to read as follows:

"Mr. Steward was contracted to provide services as a temporary landscaper for the Island after the Hurricanes. His role was to perform needed landscape projects until the Island was restored back to normal. Accordingly he was not brought on as a permanent employee. Rather he was contracted solely for the post-hurricane restoration project"

3. The questionnaire also includes the following instructions:

"Attach copies of any written agreements, billing statements, applications, or contracts between the firm and the worker. If the agreement was oral please reduce it to writing and attach. If any State or Federal Agency has ruled on the same job class as this worker or another of the same job class, attach a copy of the ruling. (These documents will not be returned.)"

a Daphne proposed to include: all check stubs for checks issued to Kyle which generally indicate number of days worked and the daily rate. Excluding the separate check stub relating to the Christmas Bonus (discussed in 3b below), there are 44 check stubs relating to payments to Kyle Steward dating back to October 2017. I think the check stubs would be requested anyway and would provide them. Chris Kroblin agrees and thinks we should provide the check stubs.

b With regard to check stubs, there are two additional separate issues: There is a check stub which is separate and states that it is a "Christmas Bonus" as per JE. I suppose that providing Kyle a Christmas Bonus could make it seem like Kyle is being treated as an employee. Not sure if you want to include the stub or delete it.

c. Second check stub issue. It is my understanding that Kyle's pay was \$240 less than it normally is during the period. Apparently, Stephanie loaned him \$240 to cover the shortfall out of petty cash. He had not paid the loan back, so, when he was let go, there was a deduction from his pay in the amount of that loan (salary). The check stub makes a reference to the deduction for the loan repayment. Does the loan of \$240 make it seem more like he is being treated as an employee?

d. Daphne also included invoices issued with respect to each payment made to Kyle, but the invoices reflect billing at an hourly rate, rather than the daily rate reflected on the check stubs, and the invoices were prepared by the office rather than Kyle. I think that the fact that we prepared the invoices would come out during the process (e.g., if asked about invoices, Kyle would likely say he never prepared or gave us any invoices). Also, that the invoices show payment at an hourly rate, which is different than the daily rate on the check stubs, creates confusion and might cause additional scrutiny. I think that our preparing the invoices would reflect negatively and would work against us, so I have excluded the invoices.

e. Daphne also included the indemnity agreement that we make all contractors, vendors and suppliers sign and which states that the person signing the agreement is a contractor, vendor or supplier. Under this agreement the person who signs it indemnifies Nautilus, Inc., Great St. Jim, LLC, LSJE, LLC and you for any personal injury claims arising out of the engagement as a contractor. It includes an assumption of the risk with respect to dangerous conditions and activities on the properties, a release and a waiver of claims. I think it could cut both ways because it looks like we make people waive certain rights to work for us. On the other hand, as Chris Kroblin indicated, the people who do this are not rocket scientists and are simply looking at the universe of factors they have been told makes someone a contractor or employee. The document clearly states the mutual understanding that Kyle is a contractor, is responsible for his own evaluation of the conditions on the property and for his own conduct, requires him to maintain his own insurance and provides additional support for treatment of Kyle as a contractor. Also, because we want to provide some documents in response to the specific request on the questionnaire, on balance, Chris Kroblin would include the indemnity. I agree and would include it as well.

f. Daphne also included a termination letter, which would ordinarily be ok, but also includes a statement that \$240 was deducted from final pay to repay a loan Stephanie gave Kyle. I think the kind of loan we are talking about here might make it appear that Kyle was treated like an employee, even though paid as a contractor. And it is highlighted in the letter, so even if we include the "loan repayment" check stub, I don't think we need to highlight it in the termination letter, so I am excluding the termination letter as well. Chris Kroblin agrees.

Decisions for you:

1. Are you ok with my changes to the questionnaire as reflected in points 1 and 2 above?

2. Are you ok with just providing the check stubs and the indemnity agreement, and nothing else, in response to the direction on the questionnaire?

3. With regard to check stubs, do you have any direction on whether or not to exclude the "Christmas Bonus" check stub and the "loan repayment" check stub?

Please advise. Thanks.

.

DARREN K. INDYKE



\*\*\*\*\*=\*\*\*\*\*

\*\*\*\*\*

The information contained in this communication is confidential, may be attorney-client privileged, and is intended only for the use of the addressee. It is the property of Darren K. Indyke. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return e-mail, and destroy this communication and all copies thereof, including all attachments.  
Copyright of Darren K. Indyke - © 2019 Darren K. Indyke – All rights reserved.

\*\*\*\*\*=\*\*\*\*\*

\*\*\*\*\*

--

please note

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of JEE  
Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return e-mail or by e-mail to jeevacation@gmail.com <mailto:jeevacation@gmail.com>, and destroy this communication and all copies thereof, including all attachments. copyright -all rights reserved

--

please note

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of

Unauthorized use, disclosure or copying of this

communication or any part thereof is strictly prohibited  
and may be unlawful. If you have received this  
communication in error, please notify us immediately by return e-mail or by e-mail to  
jeevacation@gmail.com <mailto:jeevacation@gmail.com> , and  
destroy this communication and all copies thereof,  
including all attachments. copyright -all rights reserved

--0000000000001aa64a058424a4cc-- conversation-id 337125 date-last-viewed 0 date-received  
1552667790 flags 8590195713 gmail-label-ids 7 remote-id 913415