



Are Your Independent Contractors Properly Classified?

Using independent contractors can be good for business. However, many employers have classified workers as independent contractors, who should be classified as employees.

There are big risks for employers who misclassify contractors, such as an audit by the Internal Revenue Service (IRS), Department of Labor (DOL), other federal agencies, or state tax or labor agency. If an agency determines you have misclassified workers, your company may be responsible for paying employment taxes, employee benefits, overtime, and unemployment insurance for the misclassified workers and may be subject to employment discrimination charges. Each agency, federal or state, uses its own set of factors that must be satisfied for a worker to be considered an independent contractor.

Consider these practical pointers:

- Establish written agreements with all individuals whom the company seeks to classify as independent contractors.
- Identify the party as contractor, consultant, or agent in the agreement and ensure the contractor has the required licenses, insurance coverage, and tax ID number.
- Describe the services and method of payment to be provided.
- Limit “control” provisions, especially over manner and means of performance and emphasize the contractor’s authority including the ability to perform work for others.
- State clearly that the contractor is responsible for all employment taxes.
- Describe the term of contract and circumstances for early termination.
- Specify that the contractor is responsible for equipment and benefits.
- Train managers to address only work results with contractors, not how the contractor performs the work.
- Keep track of when a contractor works for others or turns down work from you.
- Do not train contract workers.

Review the classification of your independent contractors, correct any classification errors, and shore up any areas of weak documentation so you are prepared to justify your classification of these workers in the event an auditor visits.



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