

Employee vs. Independent Contractor: What You Must Know.

While an independent contractor is different from a standard employee, the definition is not always set in stone. To prevent any unwanted surprises, it is essential to define the exact business relationship between you and your potential employees prior to beginning work.

What defines an independent contractor?

Many factors are used to decide whether an individual is an employee under the Workers' Compensation Law. If a business meets any of the criteria listed below, and the individual hired does not meet the criteria listed under independent contractors, or the services rendered are not specifically exempted as employment under the WCL, then that business must obtain a workers' compensation insurance policy.

1. **Right to Control-** The degree of direction and control a person or organization exercises over someone they contract with to perform a task is always a central issue in determining an employer-employee relationship. A person or organization controlling the manner in which the work is to be performed indicates that the task is being performed by an employee. If the person doing the labor controls the time and manner in which the work is to be done this may indicate that the task is being done by an independent contractor. If an individual is truly independent, the individual generally works under his/her own operating permit, contract or authority.
2. **Character of Work Is the Same as Employer-** Work being done that is consistent with the primary work performed by the hiring business indicates that the labor is being done by an employee. Work done by a person that is different than the primary work of the hiring business may indicate the task is being performed by an independent contractor. (For example, someone installing shingles for a roofer is generally considered the employee of that roofer. Conversely, a plumber hired on a one time basis to fix a broken pipe for a retail store owner is generally considered an independent contractor)
3. **Method of Payment-** Employees tend to be paid wages on an hourly, daily, weekly, or monthly basis. Naturally, employment is indicated if the hiring business withholds taxes and/or provides other employee benefits (Unemployment Insurance, health insurance, pensions, FICA, etc.) Whether the labor is paid using a W2 or 1099 Form for tax purposes does not matter in determining an employer/employee relationship for workers' compensation purposes. A business paying cash to an individual for services usually indicates that the individual is an employee. Payment made for performance of the task as a whole may indicate the task is being done by an independent contractor.
4. **Furnishing Equipment/Materials-** A business providing the equipment and/or materials used by people in performing the work tends to indicate an employer-employee relationship.
5. **Right to Hire/Fire-** A business retaining the authority to hire and fire the individuals performing the work indicates an employee is performing the work. An independent contractor retains a degree of control over the time when the work is to be accomplished and is not subject to be discharged by the hiring entity because of the method he chooses to use in performing the work. Naturally, an independent contractor's services may be terminated if the services rendered do not meet contractual requirements)

Now What?

1. Check the state statutes for independent contractor qualifications (<http://www.leg.wa.gov/JointCommittees/UECI/Documents/111907/ContractorTableWithPenalties-KB.pdf>). Seek legal advice for clarification as needed
2. If the state requires independent contractors to register, check the state's online portal (<http://www.azroc.gov/forms/contractorsearch.html>) to verify the contractor in question is registered
3. Execute a written contract with the independent contractor outlining the relationship. Avoid placing restrictions on the contractor's freedom to perform work for others.
4. Require the contractor to provide own tools and equipment.
5. Pay the contractor based on completion goals rather than on a weekly or biweekly basis to avoid the appearance that the independent contractor is drawing a paycheck.
6. Require an invoice for payment

Recap, What's the Difference?

Independent Contractor:

- Operates under a business name
- Has his/her own employees
- Invoices for completed work
- Has own tools and hours

Employee:

- Performs duties dictated or controlled by others
- Given training for work to be done
- Works only for employer