

Employee or Independent Contractor?

Who is an Employee?

A general rule is that anyone who performs services for you is your employee *if you can control what will be done and how it will be done*. Employees are truly under your control and direct supervision. You set the work hours, provide training, and have the right to hire and fire. The disadvantages are the expenses associated with employment taxes and workers compensation insurance. But be careful, trying to save a few dollars today by classifying your guides as independent contractors can cost you big down the road.

It is critical that you, the employer, correctly determine whether the individuals providing services are employees or independent contractors. Generally, you must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay Unemployment Tax on wages paid to an employee. You do not generally have to withhold or pay any taxes on payments to independent contractors. **Caution:** If you incorrectly classify an employee as an independent contractor, you can be held liable for employment taxes for that worker, plus a penalty.

Who is an Independent Contractor (“IC”)?

A general rule is that you, the payer, have the *right to control or direct only the result of the work* done by an independent contractor, and *not the means and methods of accomplishing the result*. Control is the most important test. The IRS and courts will examine the degree to which the facility controls the workers processes and work schedules.

A few things to think about:

- Just because you label a worker an “IC” does NOT mean they are one.
- The “IC” performs more than one important obligation.
- If you have labeled someone an “IC”, make sure the understanding is mutual.
- Use a written contract.
- A willful violation can be costly in terms of IRS penalties and liabilities.
- All circumstances are unique; consult your CPA or your attorney.

How does this affect your liabilities and general liability insurance?

Your policy is written with your business as the named insured, therefore, the policy (in summary) is intended to defend your business, its owners, and your employees if any are also named in a suit. Some general liability insurance policies will not defend against or pay claims on behalf of your independent contractors. Meaning, that if you are classifying your employees as independent contractors and they are deemed to be the cause of an accident and litigation ensues naming them individually in a suit, your policy may not defend them as individuals. This goes along with the idea the independent contractors are truly independent and carry their own insurance. They could be left to defend themselves including legal costs for a defense, and if they are found liable, the damages could be life changing. Another point to mention is that if an independent contractor is injured while working on your behalf, he/she can bring suit against you for medical and lost wages, unlike employees that must use workers compensation insurance to remedy their loss.



There are various ways to ensure you and your personnel are insured correctly. If you check off "Yes" to the question, we will review with you in more detail the best way to accommodate your needs.

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