



AMERICAN TAX RESCUE

EMPLOYEE CLASSIFICATION

Contractor versus Employee Status

This is the biggest discussed issue with all employers. You are an employer if you hire employees or independent contractors. There is of course, a wide degree of discussion of which type you are hiring. UPC Business Solutions has done audits with every type of agency in the country over this issue. More and more agencies are starting to adhere to the new ABC laws. This law was enacted in California by the state Supreme Court. This new law is based on the following three factors:

1. The person has been and will continue to be free from control or direction over the performance of the services, both under his or her contract of service and in fact.
2. The service is either outside the usual course of the business for which the service is performed or that the service is performed outside of all the places of business of the enterprises for which the service is performed; and
3. The service is performed in the course of an independently established trade, occupation, profession or business in which the person is customarily engaged, of the same nature as that involved in the contract of service.

The primary stance on the ABC law is that, you cannot hire Independent Contractors to do the same work that your business does. Again, this law is slowly crossing the entire country.

The Internal Revenue Service (IRS) stands by the “Common Law Rules”. This stance is stated on their website as follows:

In determining whether the person providing service is an employee or an independent contractor, all information that provides evidence of the degree of control and independence must be considered.

Facts that provide evidence of the degree of control and independence fall into three categories:

- **Behavioral**: Does the company control or have the right to control what the worker does and how the worker does his or her job?
- **Financial**: Are the business aspects of the worker’s job controlled by the payer? (These include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
- **Type of Relationship**: Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?





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Businesses must weigh all these factors when determining whether a worker is an employee or independent contractor. Some factors may indicate that the worker is an employee, while other factors indicate that the worker is an independent contractor. There is no “magic” or set number of factors that “makes” the worker an employee or an independent contractor and no one factor stands alone in making this determination. Also, factors which are relevant in one situation may not be relevant in another. The keys are to look at the entire relationship and consider the extent of the right to direct and control the worker. Finally, document each of the factors used in coming up with the determination.

The following link will give you information on every state.

[Employee or Contractor? The Complete List of Worker Classification Tests By State | Wrapbook](#)

Or www.wrapbook.com/blog/worker/-classification-tests-by-state

Remember, it is not only the responsibility of the Independent Contractor to be compliant with all required licenses, it is also the hiring Employers responsibility to check to make sure that all Independent Contractors are compliant with all required licenses.

Consequences of treating an employee as an independent contractor can cost you lots of money and potential closure of your company. If you classify an employee as an independent contractor and you have no reasonable basis for doing so, then you may be held liable for employment taxes for that worker. You will also be liable for other fees due to state unemployment, federal unemployment, workman’s comp insurance, etc.

Special Note: There are multiple agencies that audit for Employee Classification. These include;

- Internal Revenue Service (IRS)
- National Labor Board
- Social Security Administration
- National Medicare Board
- State Income Tax
- State Unemployment Division
- State Labor Board
- Local and State Courts due to misclassification lawsuits.

UPC Business Solutions specializes in Employee Classification compliance. We have worked with hundreds of businesses about this issue. If you need one on one counseling, please feel free to contact us.



Henderson, NV



702-263-8830



upcgroup@earthlink.net