



Classification of Workers:

Employee Verses Independent Contractor

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Employee Versus Independent Contractor Proper Classification of Workers

Classifying workers as employees or independent contractors is a critical compliance area in employment law, with significant legal and financial implications for businesses. Misclassifying an employee as an independent contractor can lead to legal penalties, back taxes, and other liabilities. Employers must carefully consider and document the basis for classifying workers as independent contractors or employees, keeping abreast of the changing legal landscape and state-specific regulations to avoid costly penalties and liabilities associated with misclassification. Here are some key considerations and guidelines:

Federal Guidelines

- **Fair Labor Standards Act (FLSA):** The FLSA establishes criteria for employment status, which impacts minimum wage, overtime pay, and other protections. It does not explicitly define independent contractors but focuses on the economic reality of the relationship, emphasizing the degree of control and independence.
- **Internal Revenue Service (IRS) Criteria:** The IRS uses a set of guidelines to assess the level of control and independence, which include behavioral control, financial control, and the type of relationship between the parties. These factors help determine whether a worker is an employee or an independent contractor for tax purposes.

State Laws

- **Varied Standards:** Many states have their own tests for determining employment status, such as the ABC test used in California and other states. The ABC test generally considers a worker to be an employee unless the hiring entity can prove three elements, including that the worker is free from control and direction in the performance of services, the worker performs work outside the usual course of the hiring entity's business, and the worker is customarily engaged in an independently established trade, occupation, or business.
- **Sector-Specific Rules:** Some states have specific rules for certain industries or professions, adding another layer of complexity to classification issues.

Key Factors in Classification

- **Control:** The degree to which the employer has control over how, when, and where the work is done is a crucial factor. Independent contractors typically have more freedom in these aspects.
- **Financial Arrangements:** How the worker is paid, whether expenses are reimbursed, and who provides tools/supplies are essential considerations.
- **Relationship Duration and Type:** Independent contractors usually work on a project basis with a defined end date, whereas employees have an ongoing relationship with the employer.

- **Integration:** Employees' work is usually integral to the business, while independent contractors' work is often peripheral.

Compliance Strategies

- **Documentation:** Clearly define the relationship with the worker in a written contract, outlining terms that demonstrate independent contractor status.
- **Consistency:** Treat all workers who are in similar positions consistently to avoid allegations of misclassification.
- **Periodic Reviews:** Regularly review worker classifications to ensure they remain accurate based on evolving work arrangements and legal standards.
- **Please seek Expert Advice:** Given the complexities and variations in law, it's advisable to consult with HR professionals or legal when classifying workers to ensure compliance with federal and state laws.