

From the desk of

Peter S. Muffoletto, C.P.A.

# Employee or Independent Contractor

Many employers attempt to avoid payroll taxes and administrative expenses by misclassifying workers as contractors, and then issue a 1099 at year end instead of properly classifying a worker as an employee.

An employee is generally considered anyone who performs services when the business controls what will be done and how it will be done.

What matters is that the business has the right to control the details of how the worker's services are performed.

Independent contractors are normally people in an independent trade or business or profession in which they offer their services to the public.

## Independent Contractor or Employee

Whether a worker is an independent contractor, or an employee depends on the relationship between the worker and the business.

Generally, there are three categories to consider.

- **Behavioral control** – Does the company control or have the right to control what the worker does and how the worker does the job? If so, the worker is an employee.
- **Financial control** – Does the business direct or control the financial and business aspects of the worker's job, if so, that individual is an employee.

Another question is whether the business aspects of the worker's job controlled by the payer? If so, that individual is an employee.

How a worker is paid, expenses reimbursed, who provides tools/supplies, etc.

If the individual is paid based upon an agreed upon salary, or hourly basis, that individual is an employee as opposed to an individual who provides invoices for work performed. This is not a form over substance matter in that if the invoicing process appears to be a sham to obscure a wage, the individual is an employee.

- **Relationship of the parties** – Are there written contracts or employee type benefits such as pension plan, insurance, vacation pay? If the worker is covered under a pension plan, insurance benefits are provided, or vacation accruals are in effect, that individual is an employee.

Another factor is whether the relationship continues and is the work performed a key aspect of the business? If so, the worker is an employee.

### **Misclassified Worker**

Misclassifying workers as independent contractors adversely affects employees due to the fact that the employer's share of taxes is not paid, and the employee's share is not withheld.

If a business misclassifies an employee without a reasonable basis, the business will be held liable for employment taxes for that worker.

Generally, an employer must withhold and pay income taxes, Social Security and Medicare taxes, as well as unemployment taxes.

Workers who believe they have been improperly classified as independent contractors can use Form 8919, **Uncollected Social Security and Medicare Tax on Wages** to figure and report their share of uncollected Social Security and Medicare taxes due on their compensation.

### **Voluntary Classification Settlement Program**

The Voluntary Classification Settlement Program is an optional program that provides taxpayers with an opportunity to reclassify their workers as employees for future employment tax purposes.

This program offers partial relief from federal employment taxes for eligible taxpayers who agree to prospectively treat their workers as employees.

Taxpayers must meet certain eligibility requirements and apply by filing Form 8952, *Application for Voluntary Classification Settlement Program*, and enter into a closing agreement with the IRS.

### **Who is self-employed?**

Generally, someone is self-employed if any of the following apply to them.

- They carry on a trade or business as a sole proprietor or an independent contractor.
- They are a member of a partnership that carries on a trade or business.
- They are otherwise in business for themselves, including a part-time business.

Self-employed individuals, including those who earn money from gig economy work, are generally required to file an tax return and make estimated quarterly tax payments.

They also generally must pay self-employment tax which is Social Security and Medicare tax as well as income tax. These taxpayers qualify for the home office deduction if they use part of a home for business.

For a further in depth discussion of this matter, visit our website at [www.petemcpa.com](http://www.petemcpa.com) and go to our FAQ's.

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