



Independent Contractor vs. Employee

A Small Business Owner's Guide

Why It Matters

Whether a worker is an employee or an independent contractor affects:

- Tax obligations
- Payroll withholding
- Workers' compensation requirements
- Unemployment insurance
- Wage and hour laws
- Potential legal liability

Misclassifying workers can result in penalties, back taxes, unpaid wages, and other legal consequences.

Employee or Independent Contractor?

There is no single factor that determines worker status.

Government agencies generally focus on the amount of control a business exercises over the worker.

Employees

Employees typically:

- ✓ Work under the business's direction and control
- ✓ Follow schedules established by the business
- ✓ Use tools, equipment, or resources provided by the business
- ✓ Perform work that is a regular part of the business's operations
- ✓ Receive ongoing supervision

Example: A coffee shop hires baristas to work scheduled shifts using the shop's equipment and procedures.

Independent Contractors

Independent contractors typically:

- ✓ Control how the work is performed
- ✓ Set their own schedules
- ✓ Use their own tools or equipment
- ✓ Work for multiple clients
- ✓ Operate independent businesses
- ✓ Have opportunities for profit or loss

Example: A graphic designer hired to create a logo for a business using their own software and equipment.

Common Misconceptions

Myth #1

“If the worker signs an independent contractor agreement, they are a contractor.”

Reality: The actual working relationship matters more than the label in the contract.

Myth #2

“If the worker wants to be a contractor, they are a contractor.”

Reality: Worker status is determined by law, not personal preference.

Myth #3

“If I pay by the project, the worker is automatically a contractor.”

Reality: Payment method alone does not determine classification.

Questions to Ask

The more times you answer “Yes,” the more likely the worker may be an employee.

- ☐ Do you control when the worker performs services?
- ☐ Do you control how the work must be completed?
- ☐ Do you provide equipment or tools?

- ☐ Is the worker performing a core business function?
 - ☐ Does the worker primarily work for your business?
 - ☐ Is the relationship expected to continue indefinitely?
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Helpful Resources

IRS Worker Classification Guidance

<https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-defined>

IRS Employee vs. Independent Contractor Information

<https://www.irs.gov/newsroom/understanding-employee-vs-contractor-designation>

U.S. Department of Labor Guidance

<https://www.dol.gov/agencies/whd/flsa/misclassification>

South Carolina Department of Employment and Workforce

<https://dew.sc.gov>

Red Flags for Misclassification

- ▶ Treating workers like employees while issuing Form 1099s
 - ▶ Requiring contractors to work fixed schedules
 - ▶ Preventing contractors from working for others
 - ▶ Providing extensive day-to-day supervision
 - ▶ Classifying all workers as contractors to avoid payroll obligations
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When to Seek Legal Assistance

Consult an attorney if:

- You are unsure how to classify workers.
- You rely heavily on contractors.
- You receive a government inquiry regarding worker classification.

- You plan to convert contractors into employees.
 - Your business operates in multiple states.
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GROW SC Practice Tip

Many startups and small businesses use independent contractors during early growth stages. Before hiring your first worker, review the relationship carefully and document the factors supporting the chosen classification.

Disclaimer

This resource provides general educational information and is not legal, tax, or employment advice. Worker classification depends on specific facts and circumstances. Consult qualified professionals regarding your situation.

Need More Help?

GROW South Carolina provides legal assistance to qualifying small businesses and nonprofits. These materials are educational resources only and do not create an attorney-client relationship. Information may change as laws and regulations are updated. Visit the [GROW South Carolina website](#) for current eligibility requirements and application information.