

Worker Classification: Employee or Independent Contractor?



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A Note Before We Begin ...

- This presentation is designed to provide information – not specific determination for any situation.
- Worker classification determinations are made on a case by case basis, depending on specific facts and circumstances.



Worker Classification

- Workers you hire may be:
 - Independent contractors
 - Employees
- Determination



Basic Definitions

- Employee - Individual who performs services for you who is subject to your control regarding what will be done AND how it will be done.
- Independent Contractor - Individual who performs services for you – but you control only the work result.



Employee vs. Independent Contractor

Categories of Evidence:

1. Behavioral control
2. Financial control
3. Type of relationship of the parties



Behavioral Control

- Type of instruction given
- Degree of instruction
- Evaluation systems
- Training provided by the business



Behavioral Control

- Key fact to consider is whether business retains the **RIGHT** to control worker regardless of whether the business actually exercises that right



Financial Control

- Significant investment
- Unreimbursed expenses
- Opportunity for profit or loss
- Services available to the market
- Payment method



Type of Relationship

- Written contract
- Employee-type benefits provided
- Relationship Permanency
- Key business activity provided by services

Determination

- File Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding with IRS
- Six-month processing time

Form 8919

- Misclassified workers report their share of Social Security and Medicare on Form 8919, Uncollected Social Security and Medicare Tax on Wages
- Replaces Form 4137 for misclassified workers



Officer Compensation

- Officers are defined as employees for FICA, FUTA and income tax withholding
- Officers are not considered employees if they:
 - Perform no services or only minor services
 - Are not entitled to remuneration (direct or indirect)



Officer Compensation

- Distributions
- Loans to shareholders
- Payments of personal expenses
- Excessive rent payments
- Management fees
- Fringe benefits



Next Steps: Independent Contractor

- Contractor completes Form W-9
 - Social Security Number or Employer Identification Number required
- File Form 1099-MISC if \$600 or more paid for services during year
 - See instructions for exceptions



Form 1099-MISC

9595 VOID CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no. XYZ Company 1234 Second Avenue Anytown, WA 99800		1 Rents \$	OMB No. 1545-0115	2011 Form 1099-MISC	Miscellaneous Income
PAYER'S federal identification number XX-XXXXXXX		2 Royalties \$	4 Federal income tax withheld \$		
RECIPIENT'S identification number XXX-XX-XXXX		3 Other income \$	5 Fishing boat proceeds \$	Copy A For Internal Revenue Service Center File with Form 1096.	
RECIPIENT'S name Indy Contractor		6 Medical and health care payments \$	7 Nonemployee compensation \$ 7,508		
Street address (including apt. no.) 508 Worker Street		8 Substitute payments in lieu of dividends or interest \$	9 Dividends or interest \$	For Privacy Act and Paperwork Reduction Act Notice, see the 2011 General Instructions for Certain Information Returns.	
City, state, and ZIP code Anytown, WA 99800		10 Crop insurance proceeds \$	11 Other made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/> \$		
Account number (see instructions)		12	13 Excess golden parachute payments \$	14 Gross proceeds paid to an attorney \$	
15a Section 409A deferrals \$	15b Section 409A income \$	16 State tax withheld \$	17 State/Payer's state no.	18 State income \$	

Form 1099-MISC Cat. No. 14425J Department of the Treasury - Internal Revenue Service
Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page

Filing Information Returns Electronically

- System for electronic filing of any of Form 1099s and other information returns, except W-2
- Later due dates for electronically filed forms
- Visit IRS.gov, search Keyword "FIRE"
- Assistance
 - Call (866)-455-7438
 - Email mccirp@irs.gov

Next Steps

- Employee completes Forms I-9 & W-4
- Employer
 - Withholds income tax, FICA
 - Completes Form W-2 at year end
 - Files Form W-2 with Social Security Administration
 - Visit SSA.gov/employer for free online Form W-2 filing & SSN verification service

Next Steps - Employer (Cont'd.)

- Responsible for depositing federal income tax withheld, FICA and FUTA taxes
- Deposit taxes using EFTPS
- Report wages, taxes by filing returns:
 - Form 941 or Form 944 for income tax, FICA
 - Form 940 for FUTA

Taxable Wages

- May be paid in cash or any other form
- Non-cash measured by fair market value
- Includes salaries, fees, tips, bonuses and commissions



Misclassification of Workers

- Determination
- Section 530 relief



§530 - Relief Requirements

- Reasonable basis
- Substantive consistency
- Reporting consistency



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§530 - Reasonable Basis

- Judicial precedent
- Prior audit
- Industry practice
- Other reasonable basis



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§503 Consistency Requirements

- Treat all workers in similar positions the same (substantive consistency)
- File all required returns – for example, Form 1099-MISC (reporting consistency)



Resources

- Visit IRS.gov, search Keywords
 - “worker classification”
 - Handout containing worker classification URLs
 - Pub 1779 - Independent Contractor or Employee
 - Form SS-8, Determination of Worker Status
 - Pub 1976, Section 530 Relief Requirements



Contact information

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