



Worker Misclassification

Are You An Independent Contractor or An Employee?

It is critical that business owners correctly determine whether the individuals providing services for their company are employees or independent contractors. Misclassification of an employee as an independent contractor may present a serious problem, since affected employees are often denied access to critical benefits and protections – such as family and medical leave, overtime, minimum wage and unemployment insurance – to which they are entitled.

Generally, employers must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to an employee. They do not generally have to withhold or pay any taxes on payments to independent contractors. Instead, independent contractors are considered self-employed and are subject to the separate Self-Employment Tax.

What factors affect classification?

Typically, you are an **employee** if you perform services that can be controlled by an employer (what will be done and how it will be done). This applies even if you are given freedom of action. You are an **independent contractor** if the payer has the right to control or direct only the RESULT of the work and not what will be done and how it will be done.

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? (e.g. 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?

If classification is still unclear, Form SS-8 (Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding) can be filed with the IRS.

How could misclassification affect me?

If you are an employee who has been wrongly classified as an independent contractor, you may have been subject to employment taxes for which your employer should be liable. If such a situation exists, you may be able to use Form 8919 (Uncollected Social Security and Medicare Tax on Wages) to figure and report the employer's share of uncollected Social Security and Medicare taxes due on your compensation. If necessary, you can file Form SS-8 yourself to have IRS determine your worker status.

If you encounter a tax dispute with the IRS as a result of your misclassification, the Low Income Tax Clinic may be able to assist! Contact us to see if we can help you resolve your dispute with the IRS.

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 [Worker Classification Flyer](#)

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