




## Employee vs. Independent Contractor Classification





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### Why is this important to IWIF & our insured?

- ✓ Proper Payroll Audits
- ✓ Obtain Proper Premium
- ✓ Helps us to reinforce our contract audit provisions (Part 5-Premium).
- ✓ IWIF could be held liable for claims filed by non-employees (Statutory Employer).
- ✓ Assist businesses in having a "fair playing field" as they compete for contracts and bids.
- ✓ To be in compliance with new law.





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### New Law- Workplace Fraud Act 2009

- The purpose of the law is to prohibit certain employers from failing to properly classify individuals who perform work for remuneration paid by the employer.
- Authorizes the Commission of Labor and Industry to initiate an investigation to determine whether certain violations have occurred.
- Established certain presumptions (work performed by an individual for remuneration paid by an employer shall be presumed to create an employer-employee relationship, unless it meets certain criteria).


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**What is the difference between an Employee & Independent Contractor**

**Employee-** Under common law rules, anyone who performs services for you is your employee if you can control what will be done and how it will be done. The issue is direction and control issue.

**Independent Contractor-** Individuals/Contractors who follow an independent trade, business or profession in which they offer their services to the public.




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**Employee Status**

- Generally follow instructions about when, where and how work is to be performed.
- Typically receive training services regarding how services are to be performed.
- Services are typically performed personally by an employee.
- Most employees are supervised by a foreman or company representative.




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**Employee Status Cont...**

- Hours are set by the employer.
- Typically an employee only works for one employer.
- Paid in regular amounts at stated intervals with tax deductions, benefits and issuance of a W-2 Tax Form at the end of a year.
- Furnished with job supplies by employer.
- Generally receives no direct profit or loss from work performed and unable to affect their own profit or loss.




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**Independent Contractor Status**

- Establish own hours and are not given instructions regarding how the job should be completed.
- Establish their own procedures and receive no training.
- May utilize others to perform job tasks and duties.
- Not supervised by a representative of the employer.
- Dictate their own time and are often retained to complete one particular job.
- May have several jobs or work for others at the same time.




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**Independent Contractor Status Cont...**

- Paid upon completion of job or by some other agreed upon arrangement or by commission (usually receives a 1099 tax form).
- Furnish own materials and incurs the costs of miscellaneous expenses.
- Receives a direct profit or loss from work performed.
- Submits own invoices for payment of work completed.
- Normally has their own business telephone and location.




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**Documentation required to show that someone is an Independent Contractor**

*From the IWIF Guidelines for Validating Independent Contractor Status Pamphlet:*

- ✓ Certificate of Insurance for General Liability Coverage.
- ✓ A copy of the Independent Contractor's Business License.
- ✓ Written Subcontract in place for each job conducted by the Individual Contract Laborer, per Title 9 - 508 of the Maryland Workers' Compensation Statute.
- ✓ A Signed Copy of the "Sole Proprietor's Status as a Covered Employee" Form.




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**An Independent Contractor is most likely an employee if...**

- ✓ Paid hourly or by piece work.
- ✓ Performs work that regular employees of business perform.
- ✓ Materials are provided by the employer.
- ✓ Hires others to perform job related functions.
- ✓ Is paid for expenses.




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**The IRS Independent Contractor Test**

*A. Behavior Control*

- Instructions the business gives the worker
- Training the business gives the worker

*B. Financial Control*

- The extent to which the worker has unreimbursed business expenses.
- The extent of the worker's investment. (An employee usually has no investment in the work other than his or her own time).




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**The IRS Independent Contractor Test Cont...**

- The extent to which the worker makes services available to the relevant market.
- How the business pays the worker (hourly, weekly, or other period of time).
- The extent to which the worker can realize a profit or loss.

*C. Type of Relationship*

- Written contracts describing the relationship the parties intended to create.
- Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation or sick pay.




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**ABC Test- To Determine if a Worker is an Employee or an Independent Contractor**

**A. Direction Control**

- Employing Unit does not require person to comply with detailed instructions
- Employing Unit does not train person
- Employing Unit does not set hours
- Employing Unit does not establish a schedule or routine
- Employing Unit may not fire person for not following specific instructions




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**ABC Test to Determine if a Worker is an Employee or an Independent Contractor Cont...**

**B. Outside of Usual Course of Business of Employing Unit**

- Work is performed offsite.
- Work performed is not integrated into employing unit's operation.
- Work performed is unrelated to employing unit's business.




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**ABC Test to Determine if a Worker is an Employee or an Independent Contractor Cont...**

**C. Independently Established**

- Listed in telephone book
- Own place of business
- Financial investment in business and can incur a loss
- Own equipment
- Paid by job
- Set own hours
- Performs service for more than 1 person at once
- Employs others




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**Did You Know??**

- ✓ It has been estimated that hiring an employee costs at least 25% more than hiring a subcontractor to perform the same work.
- ✓ Many businesses have attempted to classify workers as independent contractors when they were, in fact, employees. The IRS is attempting to put a stop to this by auditing, reclassifying and recalculating taxes (with penalties) that should have been withheld by the employer.



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**??Questions??**



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