

Independent Contractor or Employee?

The use of independent contractors, as opposed to employees, has many benefits ... including the avoidance of payroll costs, unemployment, benefits, Social Security and Medicare.

Unfortunately, the IRS is well aware of this ... and of the desire many business owners have to classify as many of their employees as possible as independent contractors. Therefore, high on the tax auditor's checklist is whether or not your independent contractors actually qualify for such status. If your contractors are found to be, in fact, employees, you could be assessed back taxes and sizeable penalties. Here are some of the guidelines the IRS uses to distinguish:

Characteristics of an Independent Contractor

Paid for a specific job; sets own hours; may work for others; hires own support staff; offers services to the general public; furnishes own tools; can earn a profit or have a loss; establishes the order and sequence of work; may perform work elsewhere.

Characteristics of Employee

Relationship with employer/customer is ongoing; follows instructions; works for only one employer/customer; no risk of financial loss; receives reimbursement for expenses; is trained by the employer; is an integral part of the business' overall operation; can resign without risk of penalty or liability.

The following might bolster a case that workers are justifiably treated as independent contractors:

- Your company has consistently treated the worker and similar workers as independent contractors.
- You have filed all the required forms.
- You have some reasonable basis for treating the worker as independent contractors, such as rulings or court cases, industry-wide practice or because prior tax auditors had never questioned the practice.