

## **Independent Contractor (Self-Employed) or Employee?**

It is critical that you, the employer, correctly determine whether the individuals providing services are employees or independent contractors. Generally, you must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to an employee. You do not generally have to withhold or pay any taxes on payments to independent contractors.

Before you can determine how to treat payments you make for services, you must first know the business relationship that exists between you and the person performing the services. The person performing the services may be -

- An [independent contractor](#)
- An [employee](#) (common-law employee)

In determining whether the person providing service is an employee or an independent contractor, all information that provides evidence of the degree of control and independence must be considered.

### **Common Law Rules**

Facts that provide evidence of the degree of control and independence fall into three categories:

1. **Behavioral:** Does the company control or have the right to control what the worker does and how the worker does his or her job?
2. **Financial:** Are the business aspects of the worker's job controlled by the payer? (these include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
3. **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?

Businesses must weigh all these factors when determining whether a worker is an employee or independent contractor. Some factors may indicate that the worker is an employee, while other factors indicate that the worker is an independent contractor. There is no "magic" or set number of factors that "makes" the worker an employee or an independent contractor, and no one factor stands alone in making this determination. Also, factors which are relevant in one situation may not be relevant in another.

The keys are to look at the entire relationship, consider the degree or extent of the right to direct and control, and finally, to document each of the factors used in coming up with the determination.

### **Consequences of Treating an Employee as an Independent Contractor**

If you classify an employee as an independent contractor and you have no reasonable basis for doing so, you may be held liable for employment taxes for that worker.

### **Forms and Associated Taxes for Independent Contractors**

#### **Form W-9**

If you've made the determination that the person you're paying is an independent contractor, the first step is to have the contractor complete [Form W-9](#), Request for Taxpayer Identification Number and Certification. This form can be used to request the correct name and [Taxpayer Identification Number](#), or

[TIN](#), of the worker. A TIN may be either a Social Security Number (SSN), or an Employer Identification Number (EIN). The W-9 should be kept in your files for four years for future reference in case of any questions from the worker or the IRS. You can find the [Form W-9](#) on our website under Helpful Resources.

### **Form 1099-MISC**

[Form 1099-MISC](#) (PDF) is most commonly used by payers to report payments made in the course of a trade or business to others for services.

If you paid someone who is not your employee, such as a subcontractor, attorney or accountant **\$600 or more** for services provided during the year, a [Form 1099-MISC](#) needs to be completed, and a copy of [1099-MISC](#) must be provided to the independent contractor by January 31 of the year following payment. You must also send a copy of this form to the IRS by February 28.

Also note that independent contractors may have their own employees or may hire other independent contractors (subcontractors). In either case, they should be aware of their tax responsibilities, including filing and reporting requirements, for these workers.

### **There are certain situations where a 1099 is not required.**

Some payments are not required to be reported on Form 1099-MISC, although they may be taxable to the recipient. Payments for which a Form 1099-MISC is not required include:

1. Payments which are *under \$600* in rents, services or other income.
2. Generally, payments to *a corporation*; unless the payments were made to an attorney.

## **Employee (Common-Law 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***. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed.

## **Household Employees**

**Did you have a household employee?** If you hired someone to do household work and you were able to control what work he or she did and how he or she did it, you had a household employee. This is true even if you gave the employee freedom of action. What matters is that you had the right to control the details of how the work was done.

The federal domestic employee coverage threshold amount is **\$1,600** for 2008.

If you pay total cash wages of **\$1,000** or more in any calendar quarter of 2008 to household employees, you are required to pay Washington state unemployment tax.

### ***Here is a list of annual forms that must be completed:***

- Schedule H for figuring your household employment taxes (due with individual tax return).
- Form W-2 for reporting wages paid to your employees (due to Employee by Jan 31<sup>st</sup>).
- Form W-3 for sending Copy A of Form W-2 to the Social Security Administration (due Feb 28<sup>th</sup>).
- Washington Employment Security Dept quarterly tax report, Forms 5208A and 5208B (due by end of the month: April, July, October & January)