

INDEPENDENT CONTRACTOR

VERSUS

EMPLOYEE

WHY SOME COMPANIES CLASSIFY WORKERS AS INDEPENDENT CONTRACTORS

Independent contractors can be less expensive than employees because companies don't have to pay benefits like:



MAKING THE WRONG DETERMINATION CAN COST YOUR COMPANY



\$79 million in back wages have been collected for more than 100,000 workers in various industries last year alone.

DETERMINING THE BEST CLASSIFICATION

The Fair Labor Standards Act provides the basis.

The main determination is whether the worker has economic independence and is operating a business of their own (independent contractor) or if they are economically dependent on the employer (employee).



6 FACTORS TO DETERMINE ECONOMIC DEPENDENCE

There are six factors, all of equal weight, that help determine economic dependence.

1

DOES THE WORKER'S MANAGERIAL SKILL AFFECT THE WORKER'S OPPORTUNITY FOR PROFIT OR LOSS?

EXAMPLE

A worker who provides corporate cleaning services and produces advertising, negotiates contracts, and decides which jobs to perform and when would likely be an independent contractor.

2

IS THE WORK AN INTEGRAL PART OF THE EMPLOYER'S BUSINESS?

EXAMPLE

A cake decorator at a custom bakery would be an integral part of the business and therefore indicates an employee/employer relationship.

3

DOES THE WORK PERFORMED REQUIRE SPECIAL SKILL AND INITIATIVE?

EXAMPLE

A carpenter who creates handcrafted custom cabinets and markets his services to multiple companies would likely demonstrate the special skill and initiative of an independent contractor.

4

HOW DOES THE WORKER'S RELATIVE INVESTMENT COMPARE TO THE EMPLOYER'S INVESTMENT?

EXAMPLE

A worker provides cleaning services for a local company and the company invests in advertising and finds clients, while the worker occasionally invests in their preferred cleaning supplies would likely be an employee/employer relationship.

5

IS THE RELATIONSHIP BETWEEN THE WORKER AND THE EMPLOYER PERMANENT OR INDEFINITE?

EXAMPLE

An editor who edits only books provided by the publishing company and completes all edits according to their specifications would indicate permanence that implies an employee/employer relationship.

6

WHAT IS THE NATURE AND DEGREE OF THE EMPLOYER'S CONTROL?

EXAMPLE

An RN provides care in nursing homes is listed with a Nurse Registry. The company interviewed her and required her to undergo training. The company sends the nurse a list of clients and she must adhere to a certain wage range and notify the company if she works with clients or misses shifts. This degree of control is indicative of an employee/employer relationship.

Sources:
http://employmentlaw.sidley.com/files/Uploads/Documents/Employment%20Blog/AI-2015_1.pdf
<http://money.cnn.com/2015/07/16/pf/independent-contractors-employees/>

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