

Introduction

The Independent Contractor Classification Toolkit guides you through the process of accurately and completely identifying all factors relevant to the assessment of whether a worker may be treated as an independent contractor for payroll tax and/or wage-hour purposes. The Toolkit provides clear explanations of applicable tests, the significance of each element of the business/worker relationship, and a fillable form to document and record all pertinent data and assessments.

Start with the documentation provided in the Guides and Background, Tips and Examples sections to understand the factors that determine classification and the legal background for such determinations. Progress to the Assessment section to access the Independent Contractor Classification Assessment Form and complete an assessment for each of your workers. Save the form and any corresponding documents in your files.

Guides

Review the documents in the Guides section to better understand the factors important to determining whether a worker is an employee or independent contractor and the types of documentation you may wish to keep to best support your determination.

- **IRS Factor Explanations:** Explains the factors the Internal Revenue Service (IRS) deems important in correctly classifying workers as either employees or independent contractors.
- **FLSA Factor Explanations:** Explains the factors relevant to the Fair Labor Standards Act (FLSA) in determining whether workers are employees or independent contractors.
- **Suggested Documentation:** Lists the types of worker information and documents you may wish to maintain to support your determination of employee or independent contractor.

Background, Tips and Examples

The documents in the Background, Tips and Examples section explore the legal background of the factors used to determine employee/independent contractor status, risks and consequences of misclassification, tips, and examples of employee/independent contractor relationships.

- **IRS 20 Common Law Factors Test:** Explains the 20 common law factors which assess whether or not a business has the right to direct and control the actions of the worker.
- **Common Law Factors Comparison Chart:** Shows a comparison chart listing each factor as it applies to an employee and to an independent contractor.
- **IRS Factors Introduction:** Provides background on the importance of the factors the IRS uses for determining worker status.
- **FLSA Factors Introduction:** Provides background on the importance of the factors under the FLSA used for determining worker status.
- **Reclassification Protection:** Describes employer relief from penalties imposed for improper classification under Section 530 of the Revenue Act of 1978.
- **Consequences of Misclassification:** Describes employer risks and penalties for misclassification and well as tax, wage and benefits consequences for incorrectly classifying workers.
- **Tips for Using Independent Contractors:** Provides a list of tips to help ensure that employers meet their obligations to correctly classify workers and can defend challenges to their determinations.

- **Employee or Independent Contractor: IRS Examples:** Provides a list of examples of both employees and independent contractors in several different industries.

Assessment

Access the Independent Contractor Classification Assessment Form when you are ready to assess your workers. This form can be filled out and saved on your computer or printed and filled out by hand. Answer each question on the assessment, and then make a determination based on your answers in the box at the bottom of page three. Save any further documentation to support or clarify responses. Save an electronic or paper copy for each worker assessed.