

Employee versus Independent Contractor

The information in these materials, and that provided by the presenter, is provided for informational purposes only and should not be considered, nor should it substitute for, legal, accounting, and other professional advice.

If you require legal advice, or need other professional assistance, you should always consult your attorney to discuss your particular facts, circumstances, and business needs.

Tax Professionals who require continuing education (CE) from the IRS, please note this seminar has been approved by the IRS for CE credits.

Examples of Workers Who May Qualify as Independent Contractors

- Lawyers
- Construction workers, repairmen, and other laborers
- Truck drivers and automobile transporters
- Auctioneers
- Credit investigators

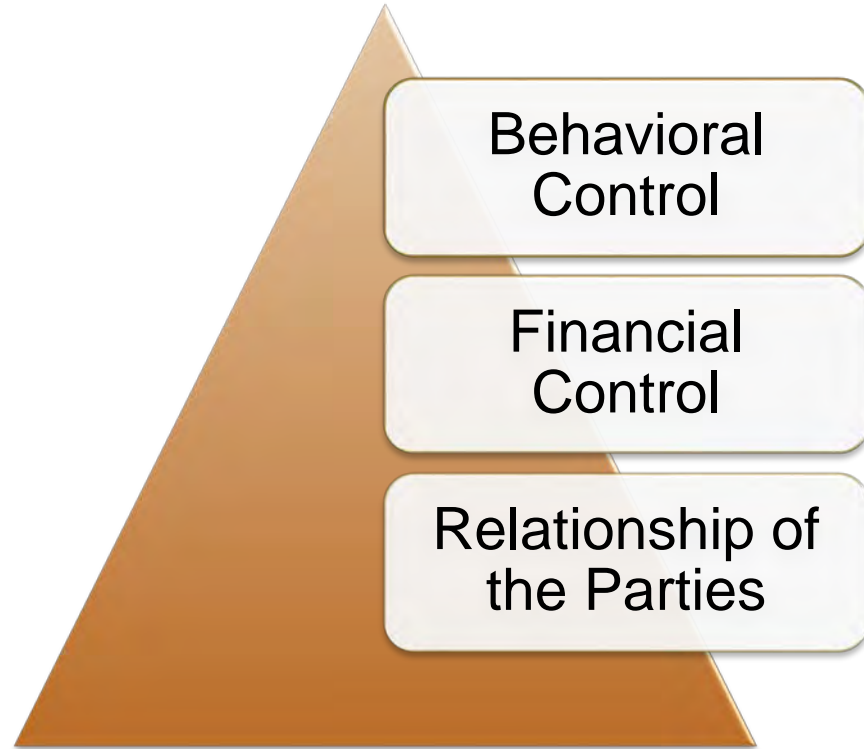
Employer Tax-Related Obligations for Workers Classified as Employees

- Withhold income taxes
- Pay half of the tax mandated under FICA
- Withhold employees' shares of FICA
- Pay the full tax required under FUTA and any state-related laws
- Pay for workers' compensation insurance
- File returns with appropriate tax authorities
- Provide Forms W-2 to employees

Employee or Independent Contractor?

- Employers control how an employee performs the work.
- Independent contractors generally determine for themselves how work/services is performed.

Categories of Evidence



Behavioral Control

Determine whether the business has retained the right to control the details of a worker's performance.

- Instructions
- Training

Financial Control

The ability to realize a profit or loss may be the strongest evidence that a worker controls the business aspects of services rendered.



Financial Control

This determination can be made by considering:

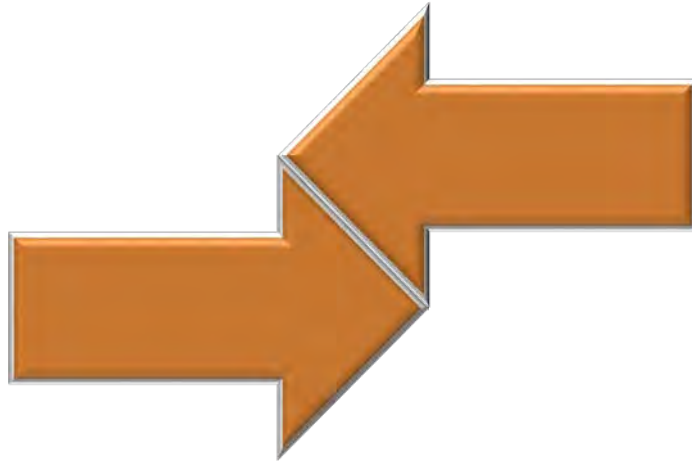
- Significant investment
- Unreimbursed expenses
- Services available to the public
- Method of payment

Financial Control

Not all financial control facts need to be present to have the ability to realize a profit or loss.

Relationship of the Parties

This relationship reflects the parties' intent concerning control.



Relationship of the Parties

- Intent of Parties
- Employee Benefits

Relationship of the Parties

- Discharge or Termination
- Continuing Relationship

Relationship of the Parties

Regular Business Activity



Proper Classification

Employees	Independent Contractors
<ul style="list-style-type: none"><li data-bbox="311 361 900 506">▪ Employers withhold social security and Medicare taxes for employees<li data-bbox="311 579 556 620">▪ Form W-2	<ul style="list-style-type: none"><li data-bbox="935 361 1561 561">▪ Must pay their own social security and Medicare (FICA) taxes, income taxes, and self-employment taxes<li data-bbox="935 634 1503 725">▪ 1099-MISC, Miscellaneous Income

Tax Risks in Misclassifying an Employee

Liabilities

- 1.5% for federal withholding*
- 20% of the employee's portion of FICA*

* these amounts double if a Form 1099 was not filed for a worker who earns more than \$600/year.

Risks in Misclassifying an Employee

Liabilities if misclassification is determined to be willful

- the full amount of income tax that should have been withheld
- the full amount of employer and employee shares for FICA
- interest and penalties

Play it Safe

When an employer is in doubt about how to classify a worker, it may be wisest to seek the advice of an attorney.

Form SS-8

Employers can obtain a definitive ruling from the IRS as to a newly hired worker's status as an employee or an independent contractor by completing Form SS-8.

Common Mistakes

Employers should not treat a worker as an independent contractor just because:

- the worker wanted to be treated as an independent contractor
- the worker signed a contract
- the worker does assignments sporadically
- the worker is paid commission only
- the worker does assignments for more than one company

Conclusion

It is important for businesses to understand worker classifications. Correctly classifying workers before they perform services can save a business confusion, significant expenses, and possible fines down the road.

THANK YOU!