
Agricultural Personnel Issues - Employee vs. Independent Contractor

Quick Notes...

The IRS uses 20 factors to distinguish between an employee and an independent contractor.

Income, social security, and Medicare taxes are withheld from the wages of an employee.

Form 1099's are filed to report payments of \$600 or more to independent contractors.

Securing human resources is a complex issue. Is a person an employee or an independent contractor? What forms need to be completed and on file? What is a fair wage? What about benefits? When and how much salary withholdings should be made? And the questions go on and on.

This article focuses on the question of whether the person providing human resources to a business is an "employee" or an "independent contractor". It is very important to correctly distinguish between the two -- each has its own rights and responsibilities.

IRS Determination Guidelines

There are many guidelines established by the Internal Revenue Service (IRS) for

distinguishing between an employee and an independent contractor. Furthermore, there are court rulings that cover most employment situations.

"Under the common law test, a worker is an employee if the person for whom he works has the right to direct and control him in the way he works both as to the final results and as to the details of when, where, and how the work is to be done. The employer need not actually exercise control. It is sufficient that he has the right to do so."

There are 20 factors that are set out in the IRS's audit manual for use in determining control. Some factors do not apply to all situations, and the weight to be given to each factor is not always constant.

1. **Instructions.** An employee is required to comply with instructions about when, where, and how to work. Even if no instructions are given, the control factor is present if the employer has the right to give instructions.
2. **Training.** An employee is trained to perform services in a particular manner. Independent contractors ordinarily use their own methods and receive no training from the purchasers of their services.

3. Integration. An employee's services are integrated into the business operations because the services are important to the success or continuation of the business. This shows that the employee is subject to direction and control.
4. Services rendered personally. An employee renders services personally. This shows that the employer is interested in the methods as well as the results.
5. Hiring assistants. An employee works for an employer that hires, supervises and pays assistants. An independent contractor hires, supervises, and pays assistants under a contract that requires him or her to provide materials and labor and to be responsible only for the result.
6. Continuing relationship. An employee has a continuing relationship with an employer. This indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals.
7. Set hours of work. An employee has set hours of work established by an employer. An independent contractor is the master of his or her own time.
8. Full-time work. An employee normally works full time for an employer. An independent contractor can work when and for whom he or she chooses.
9. Work done on premises. An employee works on the premises of an employer, or works on a route or at a location designated by an employer.
10. Order or sequence set. An employee must perform services in the order or sequence set by an employer. This shows that the employee is subject to direction and control.
11. Reports. An employee submits reports to an employer. This shows that the employee must account to the employer for his or her actions.
12. Payments. An employee is paid by the hour, week, or month. An independent contractor is paid by the job or on a straight commission.
13. Expenses. An employee's business and travel expenses are paid by an employer. This shows that the employee is subject to regulation and control.
14. Tools and materials. An employee is furnished significant tools, materials, and other equipment by an employer.
15. Investment. An independent contractor has a significant investment in the facilities he or she uses in performing services for someone else.
16. Profit or loss. An independent contractor can make a profit or suffer a loss.
17. Works for more than one person or firm. An independent contractor gives his or her services to a multiple of unrelated persons or firms at the same time.
18. Offers services to general public. An independent contractor makes his or her services available to the general public.
19. Right to fire. An employee can be fired by an employer. An independent

contractor cannot be fired so long as he or she produces a result that meets the specifications of the contract.

20. Right to quit. An employee can quit his or her job at any time without incurring liability. An independent contractor usually agrees to complete a specific job and is responsible for its satisfactory completion, or is legally obligated to make good for failure to complete the job.

Withholdings

Businesses with employees may have to pay employer and withhold employee social security and Medicare taxes and withhold income taxes. "Circular A, Agricultural Employer's Tax Guide", "Circular E, Employer's Tax Guide", and other IRS publications can serve as references for employee issues.

There are usually no withholdings on compensation paid independent contractors.

Form 1099

Payments of \$600 or more made to independent contractors (other than a corporation) for items such as custom harvesting, crop spraying, veterinarians, rents, and other services must be reported using Form 1099-MISC. Interest payments of \$600 or more made to an individual must be reported using Form 1099-INT. These forms

must be given to the recipients by January 31 of the following year. Copies of all Form 1099's must be sent to the IRS by February 28th of the following year using a separate transmittal, Form 1096.

Form W-2

A Form W-2 must be prepared for each employee to whom cash and noncash wages were paid. Copies B and C of the form must be given to the employee on or before January 31st. Copy A of the form must be sent to the Social Security Administration with a completed Form W-3 on or before the last day of February.

Penalties For Incorrect Determination

There can be a substantial penalty for treating an employee as an independent contractor. IRS publications state that an employer "classifying an employee as an independent contractor and without reasonable basis for doing so, will have to pay employment taxes for that worker. Furthermore, the employer may be held personally liable for a penalty of 100% of income, social security, and Medicare taxes if he/she is the person responsible for the collection and payment of withholding taxes."

It is important to properly classify a person as an employee or as an independent contractor. The 20 factors listed above provide some guidance in this determination. Questions concerning specific situations should be addressed by professional counsel.

Sources: [Kansas Income Tax Institute Workbook](#), annual publications, Department of Agricultural Economics, Cooperative Extension Service, Kansas State University.

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