



LEWIS THOMASON

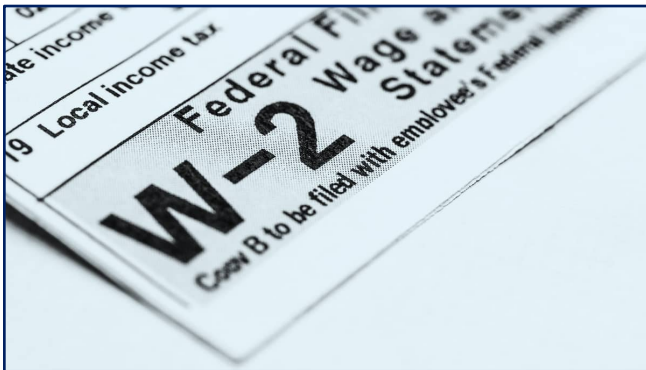
Employee vs. Independent Contractor (& Taxable Fringe Benefits)

**With Chris W. McCarty
Knoxville, Tennessee**

What is an
Employee?



Employee / IRS Definition



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.

Example: Donna Lee is a salesperson employed on a full-time basis by Bob Blue, an auto dealer. She works 6 days a week, and is on duty in Bob's showroom on certain assigned days and times. She appraises trade-ins, but her appraisals are subject to the sales manager's approval. Lists of prospective customers belong to the dealer. She has to develop leads and report results to the sales manager. Because of her experience, she requires only minimal assistance in closing and financing sales and in other phases of her work. She is paid a commission and is eligible for prizes and bonuses offered by Bob. Bob also pays the cost of health insurance and group-term life insurance for Donna. Donna is an ***employee*** of Bob Blue.



☐ Employee

☐ Independent Contractor

What is an Independent Contractor?

Independent Contractor / IRS Definition



People such as doctors, dentists, veterinarians, lawyers, accountants, contractors, subcontractors, public stenographers, or auctioneers who are in an independent trade, business, or profession in which they offer their services to the general public are generally independent contractors. However, whether these people are independent contractors or employees depends on the facts in each case. The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done. The earnings of a person who is working as an independent contractor are subject to Self-Employment Tax.

If you are an independent contractor, you are self-employed. To find out what your tax obligations are, visit the [Self-Employed Tax Center](#).

You are not an independent contractor if you perform services that can be controlled by an employer (what will be done and how it will be done). This applies even if you are given freedom of action. What matters is that the employer has the legal right to control the details of how the services are performed.

If an employer-employee relationship exists (regardless of what the relationship is called), you are not an independent contractor and your earnings are generally not subject to [Self-Employment Tax](#).

However, your earnings as an employee may be subject to FICA (Social Security tax and Medicare) and income tax withholding.

For more information on determining whether you are an independent contractor or an employee, refer to the section on [Independent Contractors or Employees](#).

It's All About Control



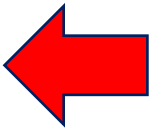
What are the Rules?

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.





Sample Factors

1. **Type of Instructions**
 - *What, Where, When, Why?*
 - *Who bought the tools, equipment, etc.?*
2. **Degree of Instruction**
 - *Detail vs. Broad*
3. **Evaluation Systems**
 - *Performance v. Result*
4. **Training Systems**
 - *On-the-Job = Employee*

A stylized illustration of a man in a green shirt and brown pants pushing a pink lawnmower across a green lawn. The background features rolling green hills, a blue sky with white clouds, and two small green trees on the right. A large, semi-transparent white circle is positioned on the left side of the image, containing text.

Larry the Landscaping Guy

- Asks to be paid \$35 each time he mows.
- Brings his own equipment.
- Tries to mow on Tuesdays but can vary.
- You tell him how high you like the grass, and that's about it.

INDEPENDENT CONTRACTOR (1099)

Ivan the IT Guy

- Works 8:30-5:00 M-F.
- Uses your computer and internet.
- Has a company e-mail address (@).
- Works for Geek Squad on weekends.

EMPLOYEE (W-2)





What about Carey the Consultant?

- Works 20-30 a week for you.
- But is paid through her LLC.
- Has a company computer and a company e-mail address (@).
- Works for other clients as well.
- Receives quarterly performance reviews from your CFO.
- Is paid a flat fee each month.

???????????

Still Confused? There's always Form SS-8.

Form SS-8 (Rev. May 2014) Department of the Treasury Internal Revenue Service		Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding ► Information about Form SS-8 and its separate instructions is at www.irs.gov/formss8 .	
Name of firm (or person) for whom the worker performed services		Worker's name	
Firm's mailing address (include street address, apt. or suite no., city, state, and ZIP code)		Worker's mailing address (include street address, apt. or	
Trade name	Firm's email address	Worker's daytime telephone number	Worker's
Firm's fax number	Firm's website	Worker's alternate telephone number	Worker's
Firm's telephone number (include area code)	Firm's employer identification number	Worker's social security number	Worker's emp
Note. If the worker is paid for these services by a firm other than the one listed on this form, enter the name, address, and number of the payer. ►			



Sample Penalties

TAX

PENALTY!

Unintentional:

- Possible back taxes of even over 40% of the misclassified contractor's wages (going back up to three years).

Intentional:

- The IRS may seek a criminal conviction with up to a year in jail and a fine as high as \$500,000 for an entity/employer.

Working Condition Fringe Benefits

Basic Rules

1. **Benefit must relate to employer's business;**
2. **Employee would have been entitled to an income tax deduction if paid personally;**
3. **Business use must be substantiated with records.**

If the cost of an item is deductible by an employee as a business expense, it may be excludable from the employee's wages as a working condition fringe benefit if provided by the employer.



De Minimis Fringe Benefits

De minimis fringe benefits include property or services, provided by an employer for an employee, with a value so small that accounting for it is unreasonable or administratively impracticable.

Examples:

- **Personal use of photocopier;**
- **Group meals, employee picnics;**
- **Theater or sporting event tickets;**
- **Coffee, doughnuts, or soft drinks;**
- **Flowers or fruit for special circumstances.**



Common Taxable Fringe Benefits

- Moving Expenses/Reimbursements;
- Clothing Purchases/Reimbursements;
- Cash Awards and/or Prizes;
- Bonuses and/or Incentive Plans;
- Use of a Vehicle/Vehicle Reimbursement;
- Vacation Awards/Expenses;



Questions?

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