

IS YOUR WORKER AN INDEPENDENT CONTRACTOR OR EMPLOYEE?

The question of whether a worker is an independent contractor or employee for federal income and employment tax purposes is a complex one. It is intensely factual, and the stakes can be very high. If a worker is an employee, the company must withhold federal income and payroll taxes, pay the employer's share of FICA taxes on the wages plus FUTA tax, and often provide the worker with fringe benefits it makes available to other employees. There may be state tax obligations as well.

Employee (Common-Law Employee)

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

Independent Contractor

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. A Form 1099-MISC is to be filed showing the amount paid if it is \$600 or more.

Statutory Employees

If workers are independent contractors under the common law rules, such workers may nevertheless be treated as employees by statute (statutory employees) for certain employment tax purposes. These individuals are agent drivers and commission drivers, life insurance salespeople, home workers, and full-time traveling or city salespeople who meet a number of tests. Social Security and Medicare taxes are to be withheld from the wages of statutory employees if all three of the following conditions apply.

1. The service contract states or implies that substantially all the services are to be performed personally by them.
2. They do not have a substantial investment in the equipment and property used to perform the services (other than an investment in transportation facilities).
3. The services are performed on a continuing basis for the same payer

Statutory Non-employees

There are generally two categories of statutory nonemployees: direct sellers and licensed real estate agents. They are treated as self-employed for all Federal tax purposes, including income and employment taxes, if substantially all payments for their services as direct sellers or real estate agents are directly related to sales or other output, rather than to the number of hours worked, and their services are performed under a written contract providing that they will not be treated as employees for Federal tax purposes

Some categories of individuals are subject to special rules because of their occupations or identities. For example, corporate directors aren't employees of a corporation in their capacity as directors, and partners of an enterprise organized as a partnership are treated as self-employed persons.

Under certain circumstances, you can ask IRS (on Form SS-8) to rule on whether a worker is an independent contractor or employee.

Visit foxpetererson.com for information on other topics



Give us a call to schedule a free consultation
Tel: 480.898.7640 | www.foxpetererson.com



Follow us on
Facebook too! www.facebook.com/foxpetererson