

*Worker Classification:  
Employee  
or  
Independent Contractor?*

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# *Worker Classification*

Workers you hire may be:

- Independent Contractors
- Employees

How do you know?



# *Basic Definitions*

## **Employee:**

- An individual who performs services for you who is subject to your control regarding what will be done AND how it will be done.

## **Independent Contractor:**

- An individual who performs services for you – but you control only the result of the work.



# *Employee vs. Independent Contractor*

## Categories of Evidence:

1. Behavioral control
2. Financial control
3. Type of relationship of the parties

# *Behavioral Control*

- Type of instruction given
- Degree of instruction
- Evaluation systems
- Training provided by the business

# *Behavioral Control*

- The key fact to consider is whether the business retains the **RIGHT** to control the worker regardless of whether the business actually exercises that right.

# *Financial Control*

- Significant investment?
- Unreimbursed expenses?
- Opportunity for profit or loss?
- Services available to the market?
- Method of payment?

# *Type of Relationship*

- Is there a written contract?
- Are employee-type benefits provided?
- Permanency of the relationship?
- Are services provided a key activity of the business?

# What if I'm Still Not Sure?

- File Form SS-8 with IRS
- Can take 6 months to process

Form **SS-8**  
(Rev. January 2001)  
Department of the Treasury  
Internal Revenue Service

**Determination of Worker Status  
for Purposes of Federal Employment Taxes  
and Income Tax Withholding**

OMB No. 1545-0004

Name of firm (or person) for whom the worker performed services		Worker's name
Firm's address (include street address, apt. or suite no., city, state, and ZIP code)		Worker's address (include street address, apt. or suite no., city, state, and ZIP code)
Trade name	Telephone number (include area code)	Worker's social security number
Telephone number (include area code)	Firm's employer identification number	Worker's employer identification number (if any)

**Important Information Needed To Process Your Request**

If this form is being completed by the worker, the IRS must have your permission to disclose your name to the firm. Do you object to disclosing your name and the information on this form to the firm?  Yes  No  
If you answered "Yes" or did not check a box, stop here. The IRS cannot act on your request and a determination will not be issued.  
**You must answer ALL items OR mark them "Unknown" or "Does not apply." If you need more space, attach another sheet.**

**A** This form is being completed by:  Firm  Worker; for services performed (beginning date) to (ending date)

**B** Explain your reason(s) for filing this form (e.g., you received a bill from the IRS, you believe you received a Form 1099 or Form W-2 erroneously, you are unable to get worker's compensation benefits, you were audited or are being audited by the IRS).

**C** Total number of workers who performed or are performing the same or similar services

**D** How did the worker obtain the job?  Application  Bid  Employment Agency  Other (specify)

**E** Attach copies of all supporting documentation (contracts, invoices, memos, Forms W-2, Forms 1099, IRS closing agreements, IRS rulings, etc.). In addition, please inform us of any current or past litigation concerning the worker's status. If no income reporting forms (Form 1099-MISC or W-2) were furnished to the worker, enter the amount of income earned for the year(s) at issue \$

**F** Describe the firm's business.

**G** Describe the work done by the worker and provide the worker's job title.

**H** Explain why you believe the worker is an employee or an independent contractor.

**I** Did the worker perform services for the firm before getting this position?  Yes  No  N/A  
If "Yes," what were the dates of the prior service?  
If "Yes," explain the differences, if any, between the current and prior service.

**J** If the work is done under a written agreement between the firm and the worker, attach a copy (preferably signed by both parties). Describe the terms and conditions of the work arrangement.

For Privacy Act and Paperwork Reduction Act Notice, see page 5. Cat. No. 16106T Form SS-8 (Rev. 1-2001)



# *Next Steps: Independent Contractor*

- Contractor completes Form W-9
- Needs to provide either
  - Social Security Number (SSN),  
XXX-XX-XXXX, or
  - Employer Identification Number (EIN),  
XX-XXXXXXX
- Payer completes/files Form 1099-MISC if \$600 or more paid for services during year

# *Information Reporting (1099-MISC)*

- File Form 1099-MISC if \$600 or more paid for services during year
- See instructions for exceptions
- Check instructions for:
  - use of Box 3 (Other Income) vs.
  - Box 7 (Non-employee Compensation)

# Form 1099-MISC

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VOID  CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.  XYZ Company 1234 Second Avenue Anytown, WA 99800		1 Rents \$	OMB No. 1545-0115  <b>2006</b>  Form <b>1099-MISC</b>	Miscellaneous Income	
PAYER'S federal identification number  XX-XXXXXXX		2 Royalties \$	3 Other income \$		
RECIPIENT'S identification number  XX-XXX-XXXX	5 Fishing boat proceeds \$	4 Federal income tax withheld \$	6 Medical and health care payments \$		
RECIPIENT'S name  Indy Contractor	7 Nonemployee compensation \$ 7,508	8 Substitute payments in lieu of dividends or interest \$	9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>		
Street address (including apt. no.)  508 Worker Street		10 Crop insurance proceeds \$	Copy A For Internal Revenue Service Center  File with Form 1096.  For Privacy Act and Paperwork Reduction Act Notice, see the 2006 General Instructions for Forms 1099, 1098, 5498, and W-2G.		
City, state, and ZIP code  Anytown, WA 99800		11			12
Account number (see instructions)	2nd TIN not. <input type="checkbox"/>	13 Excess golden parachute payments \$			14 Gross proceeds paid to an attorney \$
15a Section 409A deferrals \$	15b Section 409A income \$	16 State tax withheld \$	17 State/Payer's state no.	18 State income \$	

Form 1099-MISC

Cat. No. 14425J

Department of the Treasury - Internal Revenue Service

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# *Filing Information Returns Electronically (FIRE)*

- System for electronic filing of any of the 1099s and other information returns (NOT W-2s)
- Later due dates for electronically filed forms (an extra month)
- Online: <http://fire.irs.gov>
- For assistance call 1-866-455-7438 or email [mccirp@irs.gov](mailto:mccirp@irs.gov)



## *Next Steps: Employee*

- Employee completes Form W-4
- Employer withholds income tax, FICA (Social Security & Medicare)
- Employer completes W-2 at year end
- W-2 is filed with Social Security Administration
- Visit [www.ssa.gov/employer](http://www.ssa.gov/employer) for free online W-2 filing & SSN Verification Service

## *Next Steps: Employee*

- Employer responsible for depositing federal income tax withheld, FICA and FUTA taxes
- Report wages, taxes by filing returns:
  - Form 941 or Form 944 for income tax, FICA
  - Form 940 for FUTA

# *Taxable Wages*

- Can be paid in cash or any other form
- Non-cash measured by the fair market value
- Includes salaries, fees, tips, bonuses and commissions

# *Misclassification of Workers*

- What if you discover your workers have been incorrectly classified?
- Does Section 530 relief apply?

# *Section 530 Relief Requirements*

- Three requirements must be met to receive relief:
- Reasonable basis
- Substantive consistency
- Reporting consistency

# *Section 530 - Reasonable Basis*

The business must have a **reasonable basis** for not treating the workers as employees:

- judicial precedent
- prior audit
- industry practice
- other reasonable basis

# *Section 530 - Consistency*

The business must meet **both** consistency requirements:

- Treat all workers in similar positions the same (substantive consistency)
- File all required forms 1099 (reporting consistency)