

About Worker Classification

“When workers perform services for a business, they may be classified as independent contractors or employees. It is critical that they be classified correctly.”¹

Benefits you’re guaranteed as an employee (not as an independent contractor)²:

- **Workers’ compensation:** Insure liability for benefits paid to employees who are injured on the job
- **Tax laws:** Meet federal and state income and employment tax requirements and employer tax withholding
- **Social Security and Medicare:** Pay employer share of federal taxes funding retirement, disability, and health care benefits
- **Fair labor standards:** Comply with minimum wage, overtime, and child labor provisions
- **Collective bargaining:** Allow employees to organize unions and bargain collectively
- **Occupational safety and health:** Meet workplace safety and health standards
- **Civil rights:** Comply with laws prohibiting employment discrimination based on (1) race, color, religion, gender, and national origin, (2) disabilities, and (3) age
- **Family and medical leave:** Provide job-protection and unpaid leave provisions for family and medical leave
- **Unemployment insurance:** Pay unemployment insurance taxes and comply with other unemployment insurance program requirements
- **Employer-provided benefits:** Comply with laws safeguarding private pension, health, and other employee benefit plans

Misclassification

According to a state auditor’s report, “misclassification is a problem in Minnesota. An estimated 1 in 7 employers subject to Minnesota unemployment insurance taxes misclassified at least one employee in 2005... Some misclassification was likely deliberate, while in other cases, it was more likely the result of misunderstanding.”³

Employee or Independent Contractor?

According to the State of Minnesota, “*the mere existence of a contract does not make a worker an employee or an independent contractor. The actual relationship between the parties must be examined.*”⁴

See the table on the reverse side for the main factors used to determine worker classification.

To request a clarification of your worker classification:

- <https://www.irs.gov/pub/irs-pdf/fss8.pdf>

¹ <http://www.revenue.state.mn.us/businesses/withholding/factsheets/factsheet08.pdf> p.1

² <http://www.auditor.leg.state.mn.us/ped/pedrep/missclass.pdf> p.9

³ <http://www.auditor.leg.state.mn.us/ped/pedrep/missclass.pdf> p.25

⁴ <http://www.revenue.state.mn.us/businesses/withholding/factsheets/factsheet08.pdf> p.1

Determining Worker Classification⁵

| | Essential Characteristics of Employment | Essential Characteristics of Independence |
|---|--|---|
| <p>CONTROL Does the firm or does the worker control the means and manner in which the services are performed?</p> | <p>The firm has the right to control the means and manner in which the services are performed. The firm can require the worker to work at specific times and may also specify the methodology used to complete the work.</p> | <p>The firm's only concern is the end result of the workers efforts. The worker requires no training and can generally hire a substitute to complete the job without the firm's approval as long as the work is completed as specified in the agreement.</p> |
| <p>DISCHARGE Can either party sue for breach of contract or can the firm or worker terminate the relationship at will without incurring any legal liability?</p> | <p>The firm has the right to discharge the worker without incurring any legal liability for not allowing the worker to complete the job.</p> | <p>The firm and worker are in a binding contract, where failure to complete services is a breach of contract in which a legal remedy may be pursued by either party.</p> |
| <p>PAYMENT Does the firm or the worker dictate the value placed on the services provided? Is the worker paid by the job or in a regular and routine manner?</p> | <p>The worker is paid in a regular and routine manner for services performed, generally based of the amount of time spent on the job by the worker (the worker is paid hourly, weekly, monthly, etc.) .</p> | <p>The worker is paid by the job, on a bid basis, by percentage completion, etc., and has both the ability to make a profit, and to sustain a loss.</p> |
| <p>INVESTMENT Does the firm or the worker furnish any car or truck, tools or equipment, and/or materials or supplies necessary to perform these services?</p> | <p>The firm furnishes the worker with:</p> <ul style="list-style-type: none"> • Company car or truck, • Tools or equipment, or • Materials or supplies. | <p>The worker furnishes all tools, equipment, materials, and supplies necessary to complete the work.</p> <p>The worker has substantial investment in the tools and equipment used to perform the services and has expenses that are not directly reimbursed by the firm.</p> |
| <p>PREMISES Does the firm or does the worker control the premises where these services are performed?</p> | <p>The firm controls the premises where services are performed.</p> | <p>The worker makes his or her services available to the public on a continuing basis and generally has their own place of business.</p> |

⁵ <http://www.uimn.org/employers/wages-taxes/independent-contractors/>