

Do I hire an Independent Contractor or an Employee?

This is a common question for many business owners, managers and HR professionals – it is also often an area of legal misclassification and which may cost a business significantly in fines and other penalties.

Here are some tips which may help in determining if hiring an Independent Contractor (IC) or Employee may be best for your business:

I. What is the difference between an Independent Contractor (IC) and Employee?

Generally, an Independent Contractor (IC) is someone you hire to perform a specific service, although you do not control the manner and method in which the work is performed. The IC will most likely invoice you for their services which are also available elsewhere in the community; they hire and fire their own workers; have their own tools & equipment; and have the opportunity for profit and loss. Although you may not have control over the manner and method of their work, the business/organization does have a say in the outcome or deliverable (service provided).

An employee is someone you hire to perform a job within your company/organization and the Employer has the right to control the manner and method of the work being done; i.e.: work hours, work flow, procedures, policies, etc.

Independent Contractors (IC) are issued 1099 for Federal Tax purposes and are not subject to income and payroll tax withholding, while employees are issued a W-2 and are subject to withholdings.

II. Is it up to the Business Owner/Manager to determine if the individual is an Independent Contractor or Employee?

The decision to classify someone as an Independent Contractor(IC) or Employee is determined by IRS and Department of Labor's (DOL) rules and guidelines.

The IRS offers several tools and resources to help businesses/organizations determine if someone may be classified as an IC at - [Independent Contractor \(Self-Employed\) or Employee?](#)

III. Misclassification – What is at Risk?

The DOL and IRS have noted the misclassification of Employees as Independent Contractors as a target for compliance audits with companies such as Microsoft reportedly agreeing to pay nearly \$100 million to a group of “temporary IC” workers who should have been, although were not classified as Employees entitled to participate in the Company's benefit plans.

In addition to benefit plan participation, employees (not Independent Contractors) are subject to Federal and other income tax withholding. They are entitled to have employer FICA contributions made on their behalf, and they may be covered by worker's compensation and unemployment insurance for which the employer pays premiums.

If an employer misclassifies a group of employees as ICs, the costs to resolve may be substantial.



For more information on compliance with Employment Labor Laws and all your HR needs including policy development, contact Mike Dobert, S.P.H.R. at HR in Alignment, LLC. @ 281.494.2985 or m Dobert@hrinalignment.com You may also visit us at www.hrinalignment.com.

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