



Current Report

Division of Agricultural Sciences and Natural Resources • Oklahoma State University

Independent Contractors

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Note: *This publication is intended to provide general information about legal issues. It should not be cited or relied upon as legal authority. State laws vary and no attempt is made to discuss laws of states other than Oklahoma. For advice about how these issues might apply to your individual situation, consult an attorney.*

What is the difference between an employee and an independent contractor?

The basic difference between an employee and an independent contractor is the amount of control the employer has over the person performing the work. If the employer has the right to instruct the worker in how a task is to be performed, then the worker would be classified as an employee. Please note that it is not necessary for the employer to exercise the right, they need only possess it. If, on the other hand, the employer only has the right to specify the results of an activity (without specifying *how* the results are to be achieved), then the individual would probably be classified as an independent contractor.

To help determine your relationship to a worker, ask yourself the following questions:

- **How detailed were the instructions given by the employer to the worker?** An employee is usually subject to the employer's instructions about how, when, and where to work. An independent contractor is likely told the desired end result of a project without detailed specifications of how to achieve the result.
- **What kind of training did the employer provide to the worker?** An employee may be trained to perform work in a specific manner, whereas independent contractors usually use their own methods.
- **What kind of expenses does the worker have?** Employees are usually reimbursed for any expenses

they incur doing their jobs. Independent contractors usually are not reimbursed for business expenses.

- **How much does the worker have invested in the business?** Employees are usually provided with the items necessary to carry out their tasks. Independent contractors usually have their own equipment, facilities, and other materials commonly used in their work.
- **How long do you expect the employment relationship to last?** If you expect the working relationship to last indefinitely, then the worker is likely an employee. If, on the other hand, you hired the worker to perform a specific task, and expect the employment relationship to end after the task is completed, the worker is probably an independent contractor.

Advice from a lawyer or an accountant knowledgeable about agriculture is the best basis for making the decision between treating a worker as an independent contractor or as an employee. If you need a definitive ruling on the matter, you can fill out Form SS-8 – Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding. The IRS will examine the information you provide, and return a judgement to you. You can get a Form SS-8 by calling 1-800-TAX-FORM (1-800-829-3676) or via fax at 703-368-9694. You can also download the form (and many other IRS forms) at www.irs.ustreas.gov, the IRS internet site.

How do I need to treat independent contractors for tax purposes?

You do not need to pay all of the usual employer taxes for independent contractors or make withholdings from their payments (see the exception to this rule below). However, you are required to file a form, 1099-MISC, to report payments of \$600 or more to independent contractors for services performed for your trade or business. This form can be obtained from the IRS at the sources listed in the previous section.

If you pay the independent contractor \$600 or more, you will also need to get his/her Taxpayer Identification Number (TIN). Without it, you (the employer) will need to withhold 31 percent of the contractor's wages under the IRS "backup withholding" requirement. This withholding must also be reported on Form 1099-MISC. Form 1099-MISC should be filed with the employee on or before February 1 of the year following the year in which the work was performed, and to the IRS by March 1.

For help in how to treat employees for tax purposes, see Current Report 946, *Employer Taxes/Withholding*.

Legal References:

IRS Publication 51, Circular A – *Agricultural Employer's Tax Guide*

IRS Publication 15, Circular E – *Employer's Tax Guide*

IRS Publication 15-A – *Employer's Supplemental Tax Guide*

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