

From the desk of Chris Parfitt

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EMPLOYEE OR INDEPENDENT CONTRACTOR?

Not knowing the difference between the definition of **Employee** and **Independent Contractor** can lead to back taxes (income tax withholding, social security, Medicare tax and unemployment tax), penalties, costly workers compensation audits, and litigation. The Internal Revenue Service publishes guidelines on how to avoid these minefields. The IRS focuses on three criteria: Behavioral Control; Financial Control; and Type of Relationship.

Behavioral Control

An Employee is someone who performs services and you control what he/she will do and how they will do it. Therefore, the Employer generally determines:

1. When, where, and how to perform;
2. Whether other workers will assist with the work;
3. What equipment or tools will be used and the Employer provides them;
4. What materials or supplies are needed and the Employer provides them;
5. How the services/work will be scheduled /sequenced;
6. Which employees will perform specific work;
7. Whether training is required and the Employer provides it;

Also, the Employer should not prevent the person from working for other companies.

Financial Control

Factors establishing an independent contractor relationship:

1. Has the Independent Contractor completed a form W-9 and provided a taxpayer id number;
2. An Independent Contractor generally should not be reimbursed for expenses, equipment, and tools;
3. Independent Contractors do not receive a paycheck;
4. Independent Contractors are not covered by the Fair Labor Standards Acts, are not covered by wage and overtime regulations, and usually receive a flat fee;
5. An Independent Contractor controls whether he/she makes a profit or loss.

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Type Of Relationship

1. An Independent Contractor does not fill out an employment application.
2. Independent Contractors do not receive benefits such as profit sharing plans, sick days, and paid vacation;
3. An Independent Contractor should have his/her own insurance, business cards, letterhead, contact information, and licenses (when required).
4. Ideally there should be a written contract between the Employer and the Independent Contractor.

***If you need a sample of an Independent Contractor Agreement, feel free to contact my office.**

IRS Guidelines

The IRS has used a twenty factor test in distinguishing between Independent Contractors and Employees. Recently, the IRS has attempted to simplify the guidelines, has consolidated the twenty factors into eleven main tests and has organized them into the three main groups already discussed above: Behavioral Control, Financial Control, and the Type of Relationship of the Parties.

Employers can contact the IRS ([http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Independent-Contractor-\(Self-Employed\)-or-Employee%3F](http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Independent-Contractor-(Self-Employed)-or-Employee%3F)) and fill out form SS-8 – “Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding”. However, some employers use the form only for a self-audit and do not actually ask the IRS for a determination. The IRS may have a tendency to classify the worker as an employee if there is any doubt.

The consequences of misclassifying an employee as an independent contractor can be severe. Self audits are recommended and can prevent claims and needless taxes down the road■

Question: Are you following the guidelines for your current independent contractors?



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CALENDAR OF EVENTS

MR. PARFITT WILL ATTEND THE FOLLOWING EVENTS:

CAM 127TH ANNUAL MEETING AND 2013 DESIGN TRADESHOW PLACE

PLACE: MOTOR CITY CASINO, DETROIT, MI

TIME: FEBRUARY 6, 2013, 11:45 A.M. TO 3:00 PM.

UNDER THE DOME: AN EVENING WITH MICHIGAN'S FEMALE LEADERS

PLACE: STATE CAPITOL, LANSING, MI

TIME: FEBRUARY 6, 2013, 4:00 P.M. TO 7:30 P.M.

<https://www.inforummichigan.org/events/under-dome-evening-michigans-female-leaders>

WORD FOR THE DAY: LIMPID