



How do you determine if a person is an employee or an independent contractor?

The distinction between whether a worker is an employee or an independent contractor has important tax consequences. Work classification affects how you pay your Federal income tax, social security and Medicare taxes, and how you file your tax return. The classification also affects your eligibility for employer and social security benefits. Those who should be classified as employees, but aren't, may lose out on social security benefits, workers' compensation, unemployment benefits, and in many cases group insurance (including life and health), and retirement benefits.

Generally, a worker is either an independent contractor or an employee. Certain workers are considered employees by statute for purposes of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), or for Federal income tax withholding from wages.

Where there is no controlling statute, a worker's status is determined by applying the common law test, which applies for purposes of FICA, FUTA, Federal income tax withholding, and the Railroad Retirement Tax Act. A worker's status under the common law test is determined by applying relevant facts that fall into three main categories: behavioral control, financial control, and the type of relationship itself. In each case, it is very important to consider all the facts – no single fact provides the answer.

For contract work performed in Massachusetts, there is a controlling state statute – M.G.L. c.149 sec. 148A, which provides a more stringent definition for the contractor relationship and exposes those who incorrectly hire independent contractors to a possibility of severe civil and criminal penalties. If you are hiring someone on a contract basis in Massachusetts, it is important that you familiarize yourself with this state law.

BEHAVIORAL CONTROL: These facts show whether there is a right to direct or control how the worker does the work. A worker is an employee when the business has the right to direct and control the worker. The business does not have to actually direct or control the way the work is done – as long as the employer has the right to direct and control the work. For example:

- *Instructions* – if you receive extensive instructions on how work is to be done, this suggests that you may be an employee. Instructions can cover a wide range of topics, for example: how, when, or where to do the work, what tools or equipment to use, what assistants to hire to help with the work, and where to purchase supplies and services. If you receive less extensive instructions about what should be done, but not how it should be done, you may be an independent contractor. For

instance: instructions about time and place may be less important than directions on how the work was performed.

- *Training* – if the business provides you with training about required procedures and methods, this suggests that the business wants the work done in a certain way, and you may be an employee.

FINANCIAL CONTROL: These facts show whether there is a right to direct or control the business part of the work. For example:

- *Significant Investment* – if you have a significant investment in your work, you may be an independent contractor. While there is no precise dollar test, the investment must have substance. However, a significant investment is not necessary to be an independent contractor.
- *Expenses* – if you are not reimbursed for some or all business expenses, then you may be an independent contractor, especially if your un-reimbursed business expenses are high.
- *Opportunity for Profit or Loss* – if you can realize a profit or incur a loss, this suggests that you are in business for yourself and that you may be an independent contractor.

RELATIONSHIP OF THE PARTIES: These are facts that illustrate how the business and the worker perceive their relationship. For example:

- *Employee Benefits* – if you receive benefits, this is an indication that you are an employee. If you do not receive benefits, however, you could be either an employee or an independent contractor.
- *Written Contracts* – a written contract may show what both you and the business intend. This may be very significant if it is difficult, if not impossible, to determine status based on other facts.

If you are not sure whether you are an independent contractor or an employee complete Form SS-8, Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding, Publication 1779, Employee Independent Contractor Brochure, and Publication 15-A, Employer’s Supplemental Tax Guide, provide additional information on independent contractor or employee status.

For information on the tax responsibilities of self-employed persons, refer to Publication 505, Tax Withholding and Estimated Tax, and Publication 533, Self-Employment Tax.

References:

- Publication 15-A, Employer’s Supplemental Tax Guide
 - Publication 505, Tax Withholding and Estimated Tax
 - Publication 533, Self-Employment Tax
 - Publication 1779, Employee Independent Contractor Brochure
 - Form SS-8, Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding
 - Tax Topic 762, Independent contractor vs. employee
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I work as an independent contractor, but I do not own a business and do not perform services in the name of a business. Can I file my tax return without filing Schedule C or Schedule SE?

The income you earn as an independent contractor generally will be considered income from self-employment and you will need to file [Form 1040, SCHEDULE C](#), Profit or Loss from Business (Sole Proprietorship), or you may qualify to use [Form 1040, SCHEDULE C-EZ](#), Net Profit from Business. You will also need to use [Form 1040, SCHEDULE SE](#), Self-Employment Tax, if you had net earnings from self-employment of \$400 or more.

References:

- [Form 1040, SCHEDULE C](#), Profit or Loss from Business (Sole Proprietorship)
 - [Form 1040, SCHEDULE C-EZ](#), Net Profit from Business
 - [Form 1040, Schedule C Instructions](#)
 - [Form 1040, SCHEDULE SE](#), Self-Employment Tax
 - [Tax Information for Business](#)
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I made several thousand dollars moonlighting as an independent contractor. What taxes do I need to pay?

You are responsible for Federal income tax and self-employment taxes on your income as an independent contractor. Self-employment taxes are your contributions to social security and Medicare. Your self-employment income and expenses will be reported on [Form 1040, SCHEDULE C](#), Profit or Loss from Business, or you may qualify to use [Form 1040, SCHEDULE C-EZ](#), Net Profit from Business. You will use [Form 1040, SCHEDULE SE](#), Self-Employment Tax, to compute and report your social security and Medicare tax. Since there is no withholding on your self-employment income, you may need to make quarterly estimated tax payments. This is done using a [Form 1040-ES](#), Estimated Tax for Individuals.

References:

- [Form 1040, SCHEDULE C](#), Profit or Loss from Business
- [Form 1040, SCHEDULE C-EZ](#), Net Profit from Business
- [Form 1040, Schedule C Instructions](#)
- [Publication 334](#), Tax Guide for Small Business
- [Form 1040, SCHEDULE SE](#), Self-Employment Tax
- [Form 1040-ES](#), Estimated Tax for Individuals

- Tax Topic 355, Estimated Tax
- Tax Information for Business

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