

# Employees vs. Independent Contractor: a Long-Standing Question of Continued Consequence

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Whether an individual is properly classified as an employee or as an independent contractor has always been important, but never more critical than today. For employees, businesses are required to pay a portion of Social Security and Medicare taxes as well as withhold and remit income taxes to federal, state and local authorities. In addition, employees would be eligible to participate in any benefits offered and have the ability to apply for unemployment compensation should the employment relationship end.

An inaccurate classification of workers as independent contractors could result in penalties, risk of legal action and the inability to obtain valuable government funding, potentially forgivable loans and various payroll tax credits.

## General Guidelines

We recommend reviewing the guidelines for how a business should classify their workers. The entirety of the federal guidelines can be found [here](#). The following are some criteria to assist in the proper classification of employees and independent contractors.

### Classification as Employee

A classification of “employee” is generally guided by the following:

- Company maintains control over the timing and the manner in which the work is performed
- Individual is provided resources to perform tasks such as computers, desk and supplies
- Training and supervision has been/is being provided
- Risk in the performance of duties lies with the company and not the individual
- Arrangement is one that is continuing, yet can be terminated for various reasons

### Classification as an Independent Contractor

A classification of “independent contractor” is generally guided by the following:

- Sets and maintains their own schedule to complete work
- Supplies and utilizes their own resources, supplies and materials to complete work
- Often performs work for multiple businesses at the same time
- Assumes risk of contract performance
- Agreement is typically based on completion or performance of tasks or for a period of time

### When Outside Consultation is Needed

For some companies, it may be clear as to whether a worker is better classified as an employee or as an independent contractor; however, for a handful of businesses, it may be necessary to consult an accountant, human resource professional or labor attorney to properly determine a classification, especially since each state's interpretation of what an independent contractor is, may vary widely. If this exercise involves a change in classification, it's best to have an understanding of how to properly proceed and, of course, the financial impact of doing so.

In closing, it's imperative for business owners to classify their workers properly, not only for the protection of their businesses, but also their employees and, ultimately, to avoid the unnecessary legal pitfalls that an incorrect classification may cause.

### **Contact Us**

If you would like to know more about this topic, please contact your PKF O'Connor Davies client engagement partner or Michael F. Ganino, CPA, CFE, Partner at [mganino@pkfod.com](mailto:mganino@pkfod.com).

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