

## Quick Facts

**QF1:** Reporting wages on a 1099 form is not, by itself, an indication of independent contractor status. Other factors can be involved that will result in a conclusion of an employer/employee relationship, even if the wages are reported on a 1099.

**QF2:** There is no certificate of exemption in Idaho for independent contractors.

**QF3:** A general contractor can require a subcontractor to carry a workers' compensation insurance policy even if the subcontractor is not required by law to have a policy. This is a contractual issue between the general contractor and the subcontractor and is not regulated by the Idaho Industrial Commission.

**QF4:** It is highly unlikely that multiple workers on a job site performing the same function (roofing, dry walling, etc) are each independent contractors. See QF6.

**QF5:** In Idaho, an injured worker of an uninsured subcontractor may collect workers' compensation insurance benefits from the general contractor.

**QF6:** Improperly classifying employees as subcontractors as a device to avoid paying workers' compensation premiums is on the rise in Idaho. This is illegal and can result in unexpectedly large premium payments due at an audit, policy cancellation, civil or criminal charges, fines, and jail time. If you have knowledge of and would like to report this fraudulent activity, contact the Industrial Commission at 208-334-6000.

**QF7:** In Idaho, there is no public "safety net" for injured employees of uninsured employers. The injured worker's recourse is against the uninsured employer personally. Many employers recognize that, in addition to complying with the law, maintaining a workers' compensation insurance policy is a smart business decision.

## Statutory Employer

A statutory employer under the Workers' Compensation Law is not what is commonly thought of as the employer. Rather, it is someone a worker can turn to for compensation if the actual employer did not have insurance when the worker was injured. Under §72-216, Idaho Code, a general contractor becomes a statutory employer of an injured worker of a subcontractor working under him if the subcontractor does not have the required workers' compensation insurance in effect. *One of the primary reasons general contractors require certificates of insurance from all of their subcontractors, including those who are not required by law to have insurance, is to protect themselves from becoming a statutory employer.*

This brochure is intended to answer the most frequently asked questions regarding Idaho's classification of independent contractors and employees, and may not cover your particular situation. Contact an Employer Compliance representative for assistance.

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Requests for this publication in alternate formats will be promptly handled.

*Information on costs associated with this publication are available from the Idaho Industrial Commission in accordance with Idaho Code § 60-202.*

AA/EEO Employer

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# Independent Contractor or Employee?



## Be Sure You Know the Difference

- Definitions
- Right to Control Test
- Quick Facts

## Introduction

Whether someone who works for you is an employee or an independent contractor is an important distinction. Generally, a person cannot become an independent contractor just because he or she wants to be, or because an employer wants the person to be an independent contractor. It is not enough that the employee and employer agree.

Though it may be tempting to save money by classifying workers as independent contractors, misclassification can have serious financial and legal consequences.

This publication was designed to assist in properly classifying workers in the State of Idaho for workers' compensation insurance purposes only. Please contact one of the Industrial Commission offices on the back of this brochure if you have specific questions.

## Definitions

Determining the difference between employees and independent contractors requires a detailed analysis. According to Title 72, Idaho Code, "employee" is defined as any person who has entered into the employment of, or who works under contract of service or apprenticeship with, an employer, as opposed to an "independent contractor" which is defined as any person who renders service for a specified recompense for a specified result, under the right to control or actual control of his principal as to the result of his work only and not as to the means by which such result is accomplished.

Simply put, an independent contractor is a person who provides goods or services to another entity under terms specified in a contract. Generally speaking, independent contractors retain control over their schedules and number of hours worked, jobs accepted, job performance, and how the job is ultimately completed. This contrasts with regular employees, who usually work at the schedule required by the employer and whose performance is directly supervised by the employer. However, these definitions alone do not adequately determine a worker's status.

## The Right to Control Test

In Idaho, a worker's status as an employee or an independent contractor is determined based on the four main criteria commonly referred to as "the right to control test." Considered collectively, the four right to control factors distinguish an employee from an independent contractor. The determination of status is open-ended because it requires a factual judgment over whether a case meets the overall test. This approach neither prioritizes criteria nor specifies a minimum number that must be met. The Idaho Supreme Court has repeatedly recognized that those cases where there is doubt about whether a worker is an independent contractor or employee are to be resolved in favor of finding the worker to be an employee.

### 1. DIRECT EVIDENCE OF THE RIGHT TO CONTROL

- **Compliance with instructions**—Control is present if the person for whom the services are performed has the right to require compliance with instructions.
- **Training**—Training through meetings, attending classes, or apprenticeship with a more experienced worker indicates the right to control.
- **Integration**—Integration of the worker's services into the principal's business operations shows that the worker is subject to direction and control.
- **Services rendered personally**—If the services must be rendered personally, then the right to control is suggested.
- **Hiring, firing, supervising and paying assistants**—If the person for whom services are rendered hires, discharges, and pays workers, then that factor shows control over all workers. If a worker engages his own assistants, he may be an independent contractor.
- **Set hours of work**—Control is indicated if set hours of work are established by the person for

whom services are rendered.

- **Full time required**—If the worker devotes substantially full time to the business of the person for whom services are rendered, such person has control over the amount of time the worker can work and impliedly restricts the worker from doing other gainful work.
- **Order or sequence determined by principal**—If the worker performs services in the order or sequence determined by the person for whom the services are performed, the worker is likely an employee.
- **Oral or written reports**—A requirement that the worker submit regular oral or written reports to the principal indicates control.
- **Payment of business and/or traveling expenses**—If the principal ordinarily pays the worker's business or traveling expenses, then the worker is usually considered an employee.
- **Working for more than one firm at a time**—If a worker performs service for several unrelated persons or firms at a time, this indicates an independent contractor relationship.
- **Making service available to the general public**—If a worker makes services available to the general public on a regular and consistent basis, this indicates an independent contractor relationship.
- **Competitive selection among subcontractors**—If the principal uses some competitive means for reducing his own cost in selecting a subcontractor, then the principal may be a prime contractor instead of an employer.

### 2. METHOD OF PAYMENT

- **Payment on a regular, periodic basis**—Payment by the hour, week, day, month or other regular periodic interval generally points to an employer-employee relationship.
- **Realization of profit or loss**—A worker who can realize profit or suffer a loss as a result of

the worker's services (beyond the profit or loss ordinarily realized by the employees) is generally considered an independent contractor.

### 3. FURNISHING OF MAJOR ITEMS OF EQUIPMENT

- **Doing work on the employer's premises**—If the work is done on the premises of the person for whom the services are performed, this shows control over the worker, especially if the work could be done somewhere else.
- **Furnishing tools and equipment**—If the person for whom services are performed furnishes significant tools, materials, or other equipment, this indicates a direct employment relationship.
- **Significant investment**—If the worker invests in facilities used in performing services and that are not typically maintained by employees, this indicates an independent contractor relationship.
- **Realization of profit or loss**—This factor overlaps the method of payment but addresses whether sale of the business assets would provide the worker with a gain or recovery. If so, he may be an independent contractor.

### 4. RIGHT TO TERMINATE RELATIONSHIP WITHOUT LIABILITY

- **Continuing relationship**—A continuing relationship between the worker and the principal indicates a direct employment relationship, even if the work is performed at recurring irregular intervals.
- **Right of employer to discharge**—The principal's right to discharge the worker without liability indicates a direct employment relationship.
- **Employee's right to terminate**—If the worker has the right to stop working at any time without contractual liability, this is indicative of an employment relationship.