

# 1099 or W-2?

## A Helpful Guide to Correct Classification

There are significant financial risks to misclassifying workers as independent contractors. Simply calling someone an independent contractor and providing them a 1099 does not qualify them as a contractor according to law. Instead, an employer must carefully evaluate the degree of control a worker has in order to avoid mistakes.

The IRS focuses on three main factors when determining status as an independent contractor vs. an employee:

- Does the company control/have the right to control what the worker does and how he/she does the job?
- Are the business aspects of the worker’s job controlled by the company (i.e. how the worker is paid, etc.)?
- Are there written contracts or benefits that are similar to those provided to employees? Will the relationship continue for an extended period of time and is the work performed a key aspect of the business?

Use the checklist below to help determine whether an individual should be classified as an employee or an independent contractor. In general, a majority of “no” responses indicate an independent contractor. However, a simple majority of “no” responses does not guarantee independent contractor treatment.

Questions	Yes	No
Will the individual be required to follow your instructions for when, where and how to work?		
Will the individual need to perform tasks according to an order or routine set by the company?		
Will you dictate the location of the work performed (in state, on work premises, etc.)?		
Will the individual use equipment, tools, materials, or supplies that you provide?		
Will the individual be required to work set hours?		
Will the individual be required to work full time?		
Will you reimburse the individual for business/travel expenses?		
Is the work being performed integral to your regular business activities? In other words, does the success or continuation of your business depend on the work they’ll be doing?		
Is there an employee at your company who does work that is the same or similar to the work that this individual will be doing? Or do paid employees assist the individual in completing the contracted project?		
Must the individual personally perform the contracted services (as opposed to hiring someone else to complete the work)?		
Have you made a significant investment in facilities used by the individual to perform services?		
Will the individual require training provided by the company?		
Will the individual have an ongoing/continuing relationship with the company?		
Will the individual be required to report to the company about their activities?		
Is the individual paid regular amounts at set intervals?		
Is the individual free from suffering a loss or realizing a profit based on his/her work?		
Does the individual only perform services for your company and not others?		
Does the individual limit the availability of his/her services to the general public?		
Do you have the right to discharge the individual?		
Can the individual terminate his/her services at any time?		

*\*The checklist is only a guideline; it does not guarantee that a person is correctly classified. There is no one single homogenous definition of the term "employee". Most agencies and courts look at the totality of the circumstances and balance the factors to determine whether a worker is an employee.*