English

DEPARTMENT OF REVENUE

Classifying a Worker

As a business owner, you and your workers should know if they are employees or independent contractors. Knowing this information will help you withhold employment and income taxes when required.

It is important to classify workers correctly. If you incorrectly classify an employee as an independent contractor, you must pay employment tax equal to 3% of the misclassified worker's compensation plus any penalties and interest.

This page includes general information about classifying a worker. For details, visit:

- Withholding Fact Sheet 8 – Independent Contractor or Employee
- Independent Contractor or Employee? (IRS website)

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Determining Classification [–]

The degree of control and independence in your relationship determines if a worker is an employee or an independent contractor.

A worker is your **employee** if you have the right to control how the worker performs services (what will be done and how it will be done), even when you give the employee freedom of action.

A worker is an **independent contractor** if you have the right to control or direct only the result of the work and not how to work is performed.

Independent contractors pay self-employment tax on their earnings.

The Minnesota Department of Revenue considers many factors, falling into three broad categories:

- **Behavioral Control:** Do you (the business) have a right to direct or control how the work is being done? This control may happen through instruction, training, or other means.
- **Financial Control:** Do you have a right to direct or control the financial and business aspects of the worker's job?
- **Relationship of the Parties:** How do you and the worker perceive your relationship?

You must weigh all relevant factors when determining if someone is an employee or independent contractor. Some factors may indicate a worker is an employee, while others indicate they are an independent contractor.

Unclear Worker Classification [–]

An employer or worker can request an IRS determination to determine their classification. We will abide by the IRS's decision. To do that:

1. Complete or have your worker complete federal Form SS-8 and submit it to the IRS.
2. Send a copy of the completed form (marked "Minnesota copy") to us at the same time.
3. When you receive the IRS's written determination, send us a copy.

Mail the copies to:

Minnesota Department of Revenue
Mail Station 6501

600 N. Robert St.
St. Paul, MN 55146-6501

Other Agencies to Help Classify Workers [–]

Besides us, these other agencies can provide more information or help answer your questions about classifying workers.

Federal Agencies

Internal Revenue Service

Website: www.irs.gov (see Independent Contractor or Employee?)
Phone: 1-800-829-4933 (businesses) or 1-800-829-1040 (individuals)

You may find these other IRS publications helpful:

- Pub. 15, (Circular E) Employer's Tax Guide
- Pub. 15-A, Employer's Supplemental Tax Guide
- Pub. 51, (Circular A) Agricultural Employer's Tax Guide
- Pub. 926, Household Employer's Tax Guide

Minnesota Agencies

Department of Labor and Industry

Website: www.dli.mn.gov (see Worker Misclassification)
Email: dli.laborstandards@state.mn.us
Phone: 651-284-5075

Department of Employment and Economic Development, Unemployment Insurance

Website: www.uimn.org (see Independent Contractors)
Email: deed.customerservice@state.mn.us
Phone: 651-296-6141 or 1-800-657-3858

Department of Commerce

Website: mn.gov/commerce/business/ (see Employee Misclassification)
Email: consumer.protection@state.mn.us
Phone: 651-284-5075

Attorney General

Website: www.ag.state.mn.us (see Independent Contractor Misclassification)
Email: wage.theft@ag.state.mn.us
Phone: 651-296-3353 or 1-800-657-3787

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