



Employee or Independent Contractor: What is the Difference?

As a business owner, it can be difficult to tell employees and contractors apart. However, there are significant differences in the eyes of the government. The IRS uses several key factors to determine classification between contractor and employee: behavioral control, financial control, and relationship of the parties.

- **Behavioral Control:** Employer has the right to control the employee's work, including when, where and how the work is performed. Contractors have control over their work and how it is performed. They are not provided training, as employees are.
- **Financial Control:** The employer supplies equipment and materials to an employee. Wages are usually paid by the hour, regardless of profit or loss of the business. Contractors supply their own materials and equipment, which are deductible expenses. They are usually paid by the job and realize their own profit and loss.
- **Relationship of the Parties:** Written contracts stating the relationship between the parties can help clarify the difference between employees and contractors. Is the relationship for a limited or indefinite period of time and are the services performed by the worker vital to the company's success?

Each state has their own rules; Wisconsin rules are less flexible than federal law. The stricter form of regulations must be followed. To be considered an independent contractor in Wisconsin, a worker is required to meet all of the following:

- 1) Maintain a separate business.
- 2) Obtain a federal employer identification number or have filed business or self-employment income tax returns with the IRS based on the work or service.
- 3) Operate under specific contracts.
- 4) Be responsible for operating expenses under the contracts.
- 5) Be responsible for satisfactory performance of the work under the contracts.
- 6) Be paid per contract, per job, by commission or by competitive bid.
- 7) Be subject to profit or loss in performing the work under the contracts.
- 8) Have recurring business liabilities and obligations.
- 9) Be in a position to succeed or fail if business expense exceeds income.

The key is control; the degree to which the business can control how the worker does their job will establish the relationship of employee versus independent contractor. The more control a business can exercise over the worker, the more likely the worker is an employee rather than a contractor.