

## Employee or Independent Contractor- What are the differences?

The IRS notes three main areas in determining the proper classification:

**Behavioral Control** – a worker is classified as an employee when the business provides significant instruction and control over where to work, when to work, where to purchase supplies & tools and how to do the work. Providing on the job training is evidence that a worker is an employee. Independent contractors use their own methods for completing a job, need no or very little instruction and purchase their own tools or supplies.

**Financial Control**- an independent contractor would likely have significant investment in equipment or tools required to complete a job and have unreimbursed expenses. An independent contractor is also in a position for profit or loss related to the work performed. Independent contractors freely promote and provide their services to the other businesses or people. Employees are generally paid a guaranteed wage for regular intervals such as hourly or weekly. Independent contractors are typically paid by the job or a flat fee.

**Relationship**- the interaction type between the worker and employer determines whether it is a business relationship with an employee or independent contractor. Benefits provided such as health insurance, vacation/sick/holiday/bonus pay, retirement plans define the worker as an employee. Permanency of the relationship is also a determining factor. Expectation that the work will continue indefinitely and work that are key aspects of the business indicate an employee classification. Work for a specific period or project is indicative of an independent contractor.

The consequences of misclassifying an employee makes an employer liable for unpaid employment taxes.

An employee can work on an as needed basis or only a small number of hours; these circumstances do not indicate the person should be an independent contractor.

Independent contractors should have business insurance policies covering areas of liability, auto and/or workers compensation. Insurance certificates may be requested by businesses prior to work beginning. Businesses that engage the services of uninsured contractors may be responsible for the lack of insurance coverage at audit.

Employees that are exempt from overtime(salaried) need to meet specific requirements for this classification. Minimum salary requirement, independent decision-making authority and primary duties of office or non-manual labor field work. Jan. 1, 2020 the minimum salary has increased to \$46,020 from \$35,568 for employees in NYS.

Employees performing manual labor in NYS should be paid weekly, other hourly employees paid biweekly and salaried management/corporate officers can be paid monthly.

Providing an IRS W-4 withholding allowance form to employees at time of hire is an important requirement for employers. This form should be complete and signed before any work begins or paycheck is issued.

The IRS W-9 form is a request for identification that employers provide to independent contractors or business that they are going to engage for services. This form determines if the independent contractor or business will be issued a year-end 1099 form for monies paid above the \$599 threshold. This form should be complete and signed before any work begins or payment is issued.

See NYS Department of Labor ([labor.ny.gov](http://labor.ny.gov)) and [IRS.gov](http://IRS.gov) for forms and more information.