

Independent Contractor Rules

With high unemployment and longer periods between jobs many of the recently unemployed are considering self-employment as an answer.

Also, some employers because they want to cut down on withholding taxes, benefits, etc. may decide to pay their workers as 1099 independent contractors without checking into all the IRS rules. Employer's need to be very careful and must seek the advice of a CPA or tax attorney.

Back in 1987, the IRS documented a 20 factor test which employer's must follow to pass the test of independent contractor status. In 1996 the IRS streamlined this into three broad categories.

1) Behavioral Control: Do the facts indicate that the worker receives direct supervision or control to complete a specific task, receive instructions or training to complete the task?

2) Financial Control: Do the facts indicate that the worker has the right to direct or control from a business standpoint their tasks - ie. Capital investment for start-up expenses, unreimbursed expenses, payment methods, profit or loss opportunities.

3) Relationship of the Parties: Do the facts indicate that both parties understand their relationship with regard to written contracts (not oral), employee benefits, discharge/termination policies, regular business operations, etc.

For more info on the IRS rules [click here.....](#)

On recent IC case that I'm familiar with involved a non-profit recreational business outside of the state of Minnesota. The worker was paid both as a W-2 employee and a 1099 contractor while performing work at the same business location. The worker's W-2 job was a cook and the same worker's 1099 independent contractor tasks involved cleaning the kitchen, bathrooms and dining areas at the same facility.

In conclusion: The first step in determining whether or not to pay a worker as a W-2 employee or 1099 independent contractor is to seek the advice of a good CPA or tax attorney. Then, either the CPA or tax attorney drafts a letter to the IRS for a final ruling.

If an employer gets the determination first then they avoid costly IRS penalties later. When in doubt it is far easier and cheaper to just pay the person as a W-2 employee rather than take a chance as a 1099 IC.

DISCLAIMER: Administrative Services of America does not give tax advice nor prepare corporate or individual income tax returns. However, we can help you prepare your company financial statements, help you set-up your payroll, and generate Form 1099 for independent contractors (*if it passes the IRS test for IC's*) using QuickBooks. Then you can hand off these statements to your CPA saving you the expense of having your CPA re-construct your financial statements.

For more information on how to use QuickBooks to prepare Form 1099 please contact Dave Wilkowske at: dave@adminsoa.com or visit our website: www.adminsoa.com