

Businesses must maintain sufficient documentation to support the reasons for classifying any individual as an "independent contractor." Examples of relevant documentation include: copies of the individual's preprinted invoices, copies of signed contracts, bid forms, certificates of insurance, business forms and stationery, federal and state tax ID numbers, business telephone directory listings, public advertisements soliciting business, articles of incorporation and leases on business properties. The department will use all available information to determine a worker's status.

Call 1-866-403-6163, and select option 3, weekdays from 8:00 am to 4:30 pm, with any questions concerning employees versus independent contractors or go to:

www.getclassified.pa.gov

Although the Department has done its best to provide accurate information, it is not bound by any statements herein which may be inconsistent with the law.



pennsylvania

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF UNEMPLOYMENT COMPENSATION TAX SERVICES

*Auxiliary aids and services are available upon request
to individuals with disabilities.
Equal Opportunity Employer/Program*

Employee or Independent Contractor?



Knowing

the difference

benefits

you

All business in Pennsylvania must understand that under the Pennsylvania Unemployment Compensation, or UC law, for benefit and tax purposes, the term "employee" is presumed to apply to every individual who performs services for which he or she is paid. Unless specifically excluded from coverage, all such work under any contract of hire, express or implied, written or oral, including work performed in interstate commerce or as an officer of a corporation is covered by the UC Law, with one exception.

Services performed by a worker will be exempt under the benefit and taxing provisions of the UC Law if the individual is an "independent contractor." To be excluded from coverage, the individual who performs the services must meet two conditions pursuant to Section 4(l)(2)(B):

1. The individual has been and will continue to be free from control or direction over the performance of the services involved, both under his or her contract of service and in fact, and
2. As to these services, the individual is customarily engaged in an independently established trade, occupation, profession or business.

Only if both of these conditions are met to the satisfaction of the department will the individual be regarded as an "independent contractor." Unless and until those criteria are met, the services will be "employment" subject to the coverage of UC law.

There are additional requirements if an individual performs services in the construction industry. In that case, the individual will be designated as an independent contractor only if he or she (1) has a written contract to perform such services, (2) is free from direction or control over performance of the services both under the contract of service and in fact, and (3) is customarily engaged in an independently established trade, occupation, profession or business, the individual must:

- possess the essential tools, equipment and other assets necessary to perform the services independent of the person for whom the services are performed
- realize a profit or suffer a loss as a result of performing the services
- perform the services through a business in which the individual has a proprietary interest
- maintain a business location that is separate from the location of the person for whom the services are being performed
- have previously performed the same or similar services for another person while free from direction or control over performance of the services both under the contract of service and in fact, or the individual holds himself out to another person as available and able, and in fact is available and able, to perform the same or similar

services while free from direction or control over performance of the services

- maintain liability insurance during the contract term of at least \$50,000

The following factors are not conclusive in determining "independent contractor" status:

- employer designation, either verbally or in writing, that an individual is an "independent contractor"
- statement by an individual that he or she is an "independent contractor"
- issuance of a Federal Form 1099

A written agreement between a worker and the business does not control the worker's status. Pennsylvania's UC Law requires an examination of the facts to determine if the worker is a legitimate independent contractor. Whether the services are performed on a full-time or part-time basis is immaterial to an individual's employment status.

An investigation into an individual's employment status may occur in connection with a UC claim filed by an individual who asserts that he or she was an employee rather than an "independent contractor." Also, the Office of Unemployment Compensation Tax Services randomly selects businesses for audit to verify compliance with the UC Law.