Hiring an Independent Contractor



When you hire an independent contractor, keep documents to prove that the contractor really isn't an employee.

If you hire an independent contractor (IC), you must be vigilant to ensure that government agencies never re-classify that IC as an employee – which could subject you to back taxes and penalties. That vigilance must begin even before the IC walks in the door. If you plan to hire an IC, here are two things you can do to make sure you get the relationship off to the right start.

INDEPENDENT CONTRACTOR QUESTIONNAIRE

When you meet with a prospective IC for the first time, you should have the IC complete an independent contractor questionnaire. You should design this questionnaire to elicit the sort of information that will establish that the IC is a separate business entity, not merely an employee in IC's clothing. Here is some information you'll want to know:

- whether the IC has a fictitious or assumed business name
- how the IC's business is structured (for example, sole proprietorship, partnership, corporation, limited liability company)
- the IC's business address and phone number
- the number of people employed by the IC, if any
- any professional or business licenses the IC holds
- contact information for other companies for whom the IC has worked as an independent contractor
- how the IC markets their business (for example, Yellow Pages, advertising)
- whether the IC has an office separate from his home
- a description of the business equipment and facilities that the IC owns
- whether the IC has his own business cards, professional stationery and invoice forms, and a list of all of the types of insurance that the IC carries.

None of the answers to these questions will provide conclusive evidence that a worker is an employee or an IC. But taken together, this information will help you decide whether the worker is an independent businessperson whom you can safely treat as an IC.

Note: Do not ask an IC to complete one of your standard employment applications.

Government agencies can use the mere fact that the IC filled out an “employment” application as evidence that the IC is actually an employee.

GATHER DOCUMENTS

Before hiring an IC, make sure that the IC has the sort of documents that will enable you to establish that the IC is a separate business entity, should the government ever decide to audit you. Make copies of all such documents and keep them in your files along with the questionnaire described above.

- The documents you should request include the following:
- copies of the IC’s business cards and stationery
- copies of any advertising that the IC has done, including advertising in the Yellow Pages
- a copy of the IC’s White Pages business listing, if there is one
- if the IC is operating under a fictitious or assumed business name, a copy of the fictitious or assumed business name statement or application
- copies of any business or professional licenses
- certificates showing that the IC has insurance, including general liability insurance and workers’ compensation insurance if the IC has employees
- a copy of the invoice form that the IC uses to bill for his services
- if the IC rents business space, a copy of the office lease
- if the IC has employees, a document containing the IC’s unemployment insurance number
- copies of IRS Form 1099-MISC that other hiring firms have issued to the IC, and
- if the IC is a sole proprietor and will agree to hand them over, copies of the IC’s tax returns for the previous two years showing that the IC has filed a Schedule C, Profit or Loss From a Business (which will show that the IC has been operating as an independent business).