



Robert W. Wood

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Independent Contractor Or Employee: Why It Matters

Most people think they understand the differences between independent contractors and employees. Yet with most of the focus on **how** you determine which is which, we spend little time talking about **why** it matters.

From the individual's perspective, being an employee means that:



Your employer must withhold income tax and your portion of Social Security and Medicare taxes. Also, your employer is responsible for paying Social Security, Medicare, and unemployment (FUTA) taxes on your wages. Each year, your employer must give you a [Form W-2](#) showing the amount of taxes withheld from your pay that year.

You can deduct unreimbursed employee business expenses on [Schedule A](#) of your income tax return, IRS [Form 1040](#). However, you can do so only if you itemize deductions and they total more than two percent of your adjusted gross income.

If instead you are an independent contractor:

The business usually must give you an IRS [Form 1099-MISC](#) to report what it paid you. A copy goes to the IRS so they can match it against your return to insure you paid tax on it. With no withholding, you are responsible for paying your own income and self-employment taxes. You may need to make estimated tax payments during the year.

You can deduct business expenses on [Schedule C](#) of your own Form 1040.

From an employer's viewpoint, paying independent contractors offers the benefits of:

- No income tax withholding;
- No employment taxes;
- No liability for acts of employees—like driving a car on company business;
- No federal and state discrimination laws covering only employees; and
- No fringe benefit, pension, retirement, or other plans.

Many worker status cases look primarily at:

- The employer's degree of control over the worker;
- The worker's opportunity for profit or loss;
- The worker's investment in facilities;
- How long-term the relationship is; and
- The worker's skill set.

Most of the discussion is about how to tell independent contractors from employees. You may not think about what happens if workers are recharacterized from independent contractors to employees. There may be big liabilities for failure to withhold taxes in the past, plus penalties and interest.

The taxes that must be withheld include income and employment taxes. If the employer cannot prove the workers paid their own income taxes, the employer can be required to pay the taxes it should have withheld. See [Failing To Pay Employment Taxes Means Personal Liability](#).

For more, see:

[Don't Send Money For Worker Status Amnesty!](#)

[IRS Won't Tell States Worker Status Amnesty Details](#)

[Are Lawyers Independent Contractors Or Employees?](#)

[States Start Conforming To IRS Independent Contractor Amnesty](#)

[California's Tough New Independent Contractor Law](#)

[Winning Independent Contractor Battles](#)

[IRS Narrows Independent Contractor Relief](#)

[Lawyers Are Employees, Not Independent, Says Fifth Circuit](#)

[Is IRS Making Independent Contractor Treatment Even Harder](#)

*Robert W. Wood practices law with [Wood LLP](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009 with 2012 Supplement, [Tax Institute](#)), he can be reached at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*