



Employment Practices

HR

Courtesy of Meridian Benefits Consulting

Q Who is considered an independent contractor?

A Just because someone signs a contract does not mean he or she is an independent contractor. You must be careful that you don't have employees and non-employees doing the same job but not being offered the same pay, benefits, etc., otherwise you may end up paying out large sums of back pay if someone complains.

Some factors to consider in determining whether someone is an independent contractor or an employee include:

- Whether or not the services provided are fundamental to your business
- Whether he or she will be providing services to the company for a predetermined amount of time or project, or permanently
- Whether or not the individual is investing his or her own resources in equipment and materials
- Whether or not he or she could either profit or lose money from the relationship
- What level of initiative and involvement the individual has in the services being rendered to the company

If the individual's primary income comes from the company, and not from multiple companies with whom he or she contracts, the classification would be "employee" rather than "independent contractor." This means that the Fair Labor Standards Act's overtime protections and minimum wage requirements apply to this individual, though they would not apply if the individual were an independent contractor.

Someone who provides his or her own tools to do a job, sets his own schedule and has an agreement with you to complete a certain project or perform services for a certain amount of time is considered an independent contractor, not an employee. A basic rule to go by is that someone is an independent contractor if the employer has the right to control only the result of the work, and not what will be done and how it will be done.