

Independent Contractor vs Employee

So-called "independent contractor vs employee" or "Independent contractor or employee?" legal issues arise when employers [hire](#) workers as independent contractors, but then attempt to control them as employees. Employers are entitled to control employees to a large degree, but not independent contractors.

In fact, companies are clients of independent contractors (ICs), not "employers" in the traditional sense. Clients are entitled to control the projects for which they hired ICs, but they are not entitled to directly control the ICs.

Even so, there is no Federal "Independent Contractor vs Employee Law" per se, that specifically protects ICs. Because [employment laws](#) are designed to protect employees, they don't specifically protect ICs either.

Did you know? The pending [Employee Misclassification Prevention Act](#) (or a future equivalent) might become the first so-called "Independent Contractor vs Employee Law" at the Federal level. Meanwhile, the U.S. Department of Labor has launched a [Misclassification Initiative](#) to step up its enforcement efforts to punish employers for misclassifying employees as independent contractors.

For example, employment laws don't require employers to pay [overtime](#) or the [minimum wage](#) to independent contractors or provide them with mandatory [employee benefits](#), as they require for employees. The laws also don't require employers to withhold and pay Federal, state and Social Security (FICA) taxes on behalf of independent contractors, as they require for employees.

As a result, it's to the advantage of employers to hire workers as independent contractors on paper, but then attempt to control them as employees. Independent contractors often feel pressured to put up with it, to keep their contract jobs and earn favorable referrals for future jobs.

But, by law, workers are either independent contractors or employees with no in between. Subsequently, independent contractors do have avenues of relief for such exploitation by employers. That's because it violates employment laws that have related independent contractor vs employee [regulations](#), despite that the laws don't specifically protect independent contractors.

Independent contractor vs employee regulations prohibit employers from misclassifying employees as independent contractors, not to specifically protect ICs per se, but because it deprives employees of their rights under the relevant laws. It also deprives government agencies, such as unemployment offices, of their due.

In turn, employers are not allowed to control independent contractors as employees. Relevant laws and enforcing government agencies include, but are not limited to, the following.

- [Fair Labor Standards Act \(FLSA\)](#) enforced by the [U.S. Department of Labor](#)
- [Unemployment laws](#) enforced by [state unemployment offices](#)
- [Workers' compensation laws](#) enforced by [state workers' compensation agencies](#)

Additionally, the Internal Revenue Service (IRS) enforces independent contractor vs employee rules that prohibit misclassification of Form W-2 workers (employees) as Form 1099 workers (ICs). The IRS calls them Common-Law Rules because they're based on [common law](#). At this writing, the IRS generally explains its Common-Law Rules in "[Topic 762 - Independent Contractor vs Employee](#)" and related publications.

To determine if workers are independent contractors or employees by law, among other factors, relevant [government agencies](#) and the courts examine the employment relationship for the degree of

control an employer has over the workers in question, along with the degree of independence the workers have from the employer. The examination is often referred to as an "economic-realities test" or "right-to-control test".

Because government agencies and the courts consider the whole picture regarding [alleged](#) independent contractor vs employee misclassifications, a single factor might not determine whether a worker is an independent contractor or employee by law; on the other hand, it might, depending on how extreme it is.

But, in general, the more an employer attempts to control a worker, the more likely it is that the worker is an employee by law. The bottom line is, *independent* is the operative word in *independent contractor* under independent contractor vs employee rules and regulations.

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