

# Florida Department of Revenue

## Classification of Workers for Reemployment Tax – Employees vs. Independent Contractors

**Employers must determine whether a worker is an employee or an independent contractor**, so they can correctly include all employees on their *Employer's Quarterly Report* (Form RT-6). Misclassification of workers is not just a tax reporting issue; it also affects claims for reemployment assistance benefits. If a person files a claim for benefits and the employer has not been including the person on the quarterly report, this can cause a delay in benefit payments. **The intentional misclassification of a worker is a felony.**

Chapter 443, Florida Statutes, governs whether services performed constitute employment subject to the Florida Reemployment Assistance Program Law. This law provides that employment includes service performed by individuals under the usual **common law rules** applicable in determining an employer-employee relationship. **The common law rules look primarily at the following 10 factors of the working relationship to determine if the worker is an employee or an independent contractor.**

**(1) The extent of control which, by the agreement, the business may exercise over the details of the work.**

**If the employer retains the right to dictate how the work should be done, the worker is an employee.** If the employer decides what work the worker will do and how the worker will do it, then the worker is considered an employee. When an employer hires an independent contractor, the employer is normally interested only in the end result, not in the details of how the contractor performs the work. An independent contractor is not subject to the will and control of the employer. The employer can decide what results are expected from the independent contractor, but cannot control the methods used to accomplish those results. This factor is the most important of the 10 common law factors.

**(2) Whether the one employed is engaged in a distinct occupation or business.**

A person engaged in a distinct occupation or business is more likely to be an independent contractor **if the occupation or business is separate and distinct** from the employer's business.

**(3) Whether the work done in a certain locality is usually done under the direction of the employer or by a specialist without supervision.**

**If the work is usually done in that locality under the direction of an employer, then the worker is more likely to be an employee.** If the work in that locality is usually done by a specialist without supervision, then the worker is more likely to be an independent contractor.

**(4) The skill required in the particular occupation.**

The greater the skill required for the occupation, the more likely the worker is an independent contractor. **A contract for labor only will normally be considered a contract of employment** while the hiring of a licensed professional is more likely to be considered the hiring of an independent contractor.

**(5) Whether the employer or the worker supplies the instrumentalities (for example: equipment, vehicle, materials), tools, and the place of work for the person doing the work.**

Independent contractors are generally expected to provide or purchase everything they need to do the job. **Employees are not expected to provide their own workplace, materials, tools, and supplies, or to otherwise invest their own money in the business.**

**(6) The length of time the person is employed.**

The more long-term, continuous, and exclusive the relationship is, the more likely it is to be employment.

**(7) The method of payment, whether by the time or by the job.**

**Independent contractors generally perform their work one job at a time and are paid by the job. An employee is paid for his time.**

**(8) Whether the work is a part of the regular business of the employer.**

**If the service provided by the worker is an integral part of the service the employer provides to the public, the worker is more likely to be an employee.** If certain services are so essential to a business that it will succeed or fail based upon how well those services are performed, the business will often want to exercise enough control over the services to ensure they are good. That can make a business the employer of such workers.

**(9) Whether the parties believe they are creating the relationship of employer and employee.**

If there is a written agreement between the parties describing the relationship it should be honored, unless other provisions of the agreement, or the actual practice of the parties, show that the agreement is not a valid description of the status of the working relationship. **If the actual practice of the parties shows an employee relationship, an agreement which describes the worker as an independent contractor will be disregarded.** How the worker is treated, not the language of a written agreement or the issuance of a 1099, determines whether the worker is an employee or an independent contractor.

**(10) Whether the hiring party is or is not in business.**

**If the hiring party is in business, it is more likely that the worker is an employee.** If the hiring party is an individual, the worker is more likely to be an independent contractor.

*The State of Florida's common law criteria are similar to, but independent of, the Internal Revenue Service's criteria for determining independent contractor status. [Visit the IRS website for information regarding their criteria.](#)*

## **Resolving Claims for Benefits**

If a worker files a claim for reemployment assistance benefits but the business did not report the worker, the Department of Revenue will investigate the relationship between the worker and the business. To determine the proper classification of a worker, the Department will ask each party to complete an *Independent Contractor Analysis* ([Form RTS-6061](#)). The Department will review the information and issue a determination on the status of the worker and/or those workers in that worker's class.

If either the employer or the claimant/worker timely protests the determination, the Department of Economic Opportunity (DEO) will assign a special deputy to hold a hearing on the matter. The hearing officer will issue a recommended order. The executive director of DEO or a designee will then issue a final order which may adopt, modify or reject the recommended order. [Visit DEO's website to view its recommended orders.](#) These can guide parties seeking to determine how similar workers were treated in the past.