

Independent Contractor Law

Employee or Independent Contractor? How the Law Tells the Difference.

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The vast majority of household workers are employees, not independent contractors. The difference between employees and independent contractors hinges on the amount of control one has over the worker. If the employer has the right to control what must be done and how it must be done, the worker is their employee. If only the worker can control how the work is done, the worker is an independent contractor. An independent contractor usually provides his or her own tools and offers services to the general public.

Example 1: *A family hires Sue to care for their elderly mother and to do light housework 4 days a week in their home. Sue follows the family's instructions concerning care for their mother and the household duties, and the family provides the supplies Sue uses to do her work. Sue is a household employee.*

Example 2: *A family hires Joe to care for their lawn. Joe also offers lawn care services to other homeowners. He provides his own tools and supplies and he hires and pays any helpers he needs. Joe is an independent contractor, not an employee of the family. Joe is responsible for all employment taxes.*

Employee vs. Independent Contractor: Payroll and Tax Requirements

In example 2 above, Joe the independent contractor is responsible for all payroll taxes. This means that Joe is responsible for remitting 15.3% in Social Security and Medicare (both employer and employee portions), federal and state income taxes, and potentially other state taxes. The families he works for pay his lawn care fees and Joe handles all payroll tax withholding and reporting requirements.

Household workers are employees and their employers are required to **withhold** payroll taxes from their pay. These include: half of Social Security and Medicare, federal and state income taxes, and potentially other state taxes. In addition, their employers are required to **pay** half of Social Security and Medicare, federal unemployment taxes, state unemployment taxes and potentially other state taxes. These taxes are in addition to the employee's salary.

Ensure Legal Compliance

To comply with the law, household workers must be paid and reported as employees. If you classify a household employee as an independent contractor, you can be held responsible for both halves of Social Security and Medicare, federal and state unemployment taxes, penalties and interest. If you want a formal ruling from the IRS, you can obtain one by having your employee complete Form SS-8. Simply mail the form to the IRS, and they will respond with a written ruling on whether you should classify your worker as an employee or an independent contractor. Please note, however, that the SS-8 ruling will take approximately six months.

If you have any questions or would like a free consultation on your specific situation, please don't hesitate to call. We're here to help.

