

Independent Contractor (IC) vs. Employee (EE)

Help Sheet

What makes an independent contractor?

An independent contractor has his/her own business. An employee works for an employer. While most of the time the distinction is obvious, this is not always the case. So there are multiple key factors that help employers determine the difference. No one factor can be used alone to determine status. It is the *combination of the factors* that ultimately determines the status. In fact, MN Statute 5224.0070 states that all or most factors should be “substantially met” to determine independent contractor status.

Independent Contractor	Employee
An Independent Contractor <u>decides when, where and how</u> the work will be performed within broad guidelines. He/she can <u>subcontract</u> the work or parts of the project to others and <u>can decide what tools to use</u> and what work must be performed to complete the project.	An employee is usually <u>instructed</u> (on some level and with some flexibility) on when, where, and how the work is performed. He/she <u>cannot hire or subcontract others</u> to assist in the completion of the project without permission from the employer. An employee <u>uses the employer’s tools</u> , supplies, etc.
An independent contractor <u>advertises</u> his/her services to the general public. He/she may <u>provide the services to multiple entities</u> .	An employee might be <u>recruited</u> to work on the project or perform the activity and <u>doesn’t normally provide the services elsewhere</u> .
An independent contractor risks financial profit or loss. This typically means he/she provides a <u>set price for the services</u> and risks a loss if his/her <u>investment into the project</u> (supplies, mileage, hours etc) exceeds the price the on which the estimate was based. This also means there is a <u>written contract in place</u> prior to the services being provided.	There is no risk of financial loss to the worker as a direct result of the project. This means the worker is <u>paid by the hour</u> and/or that the worker <u>uses the employer’s supplies, facilities, etc</u> . There is <u>no financial investment</u> on the part of an employee to perform the service or complete a project.
Worker has his/her own <u>liability insurance</u> and is also <u>not covered under the employer’s workers compensation</u> in the event of a work-related injury.	An employee is <u>covered under workers compensation insurance</u> . The employer is protected under its liability insurance for a claim resulting from the personal behavior or negligence of an employee.
Services provided are <u>outside of the normal element</u> of the employer’s business.	Services provided are a <u>key aspect of the regular business</u> .
An independent contractor who “quits” before the end of the assignment (or a company who ends the relationship with an independent contractor in the middle of a project) would risk a “breach of contract” claim.	An employee can rightfully resign in the middle of a project and the employer can also terminate the employee at any time.

What happens if a worker is misclassified?

Liability for an employer is significantly greater by misclassifying an employee (EE) as an independent contractor (IC) than it is to misclassify an independent contractor as an employee. In addition, the benefits to the worker are less if he/she is incorrectly classified as an IC.

- An EE who is misclassified as an IC could lose out on Social Security, Medicare, and retirement (SPTRFA or PERA) contributions. They may also not be covered under workers compensation if they suffer a work-related injury.
- An employer who incorrectly pays an EE as an IC is subject to significant penalties and fines in the event of a federal or state audit.