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## The Independent Contractor Question

*By Mike Schaffer — posted 02/01/2008*

With tax season fast approaching, building service contractors and others in the janitor industry that hire independent contractors—whether for cleaning, shipping, or any of a variety of services—are urged to make sure they fully understand the rules regarding their status. If the U.S. Internal Revenue Service (IRS) finds that independent contractors should have been treated as employees, the financial consequences can be severe.

Recent trends indicate that the IRS is taking a closer look at this issue. This is likely because the use of independent contractors in place of employees has been on the rise in the United States. A broad range of industries use independent contractors, but they are most commonly found working for trucking and delivery services, high-tech industries, and janitorial services.

Government labor statistics do not specifically track the number of independent contractors working in the United States, but a Government Accountability Office report estimated that there were more than 40 million such workers as of 2005—almost a third of the entire workforce!

Many businesses find working with independent contractors to be a significant cost savings because the company does not have to pay employment taxes or workers' compensation.

### **Control Issues**

At the heart of the issue of accurate classification of independent contractors is how much control a company has over them.

In one case, a delivery company allowed its drivers to use their own

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trucks and offered some flexibility in delivery assignments. However, the delivery company required the drivers to display its company logo on their trucks, maintain dress standards, and meet various delivery and operational requirements. Although a final ruling is still pending, so far tax courts have indicated the company exerted enough control over these workers that they should have been treated as employees, requiring the delivery firm to pay years of back employment taxes, including penalties and interest.

In a similar case, another delivery company gave its drivers much greater flexibility in assignments, allowed them to hire their own independent contractors, did not require the drivers to bear the company's logo on their trucks, and had no specific dress or operational standards. The courts have ruled that these workers could indeed be treated as independent contractors.

In general, to classify a worker as an independent contractor, the following criteria must be met:

- The independent contractor must be allowed to work for other clients.
- The independent contractor must be allowed the option of turning down job assignments.
- The independent contractor must be allowed the option of having another person do the actual work.
- The independent contractor must be able to determine how the work will be carried out.

Essentially, this means the hiring company can be concerned only with the results of the work performed by an independent contractor—but it cannot control or direct how those results are accomplished.



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