

Businesses must maintain sufficient documentation to support the reasons for classifying any individual as an “independent contractor.” Examples of relevant documentation include: copies of the individual’s preprinted invoices, copies of signed contracts, bid forms, certificates of insurance, business forms and stationery, federal and state tax ID numbers, business telephone directory listings, business website, public advertisements soliciting business, articles of incorporation and leases on business properties. The department will use all available information to determine a worker’s status.

Call 866-403-6163, and select option 1, weekdays from 7:30am to 4:00pm, with any questions regarding proper classification of workers or go to:

www.dli.pa.gov/getclassified

Although the Department has done its best to provide accurate information, it is not bound by any statements herein which may be inconsistent with the law.

Auxiliary aids and services are available upon request to individuals with disabilities.
Equal Opportunity Employer/Program



pennsylvania

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF UNEMPLOYMENT COMPENSATION TAX SERVICES

Employee or Independent Contractor?



Knowing

the difference

benefits

you

All business in Pennsylvania must understand that under the Pennsylvania Unemployment Compensation Law, or UC law, for benefit and tax purposes, the term “employee” is presumed to apply to every individual who performs services for which the worker is paid. Unless specifically excluded from coverage, all such work under any contract of hire, express or implied, written or verbal, including work performed in interstate commerce or as an officer of a corporation is covered by the UC Law. One exception to the general rule is for independent contractors.

Services performed by a worker will be excluded under the benefit and taxing provisions of the UC Law if the individual is an “independent contractor.” To be excluded from coverage, the individual who performs the services must meet two conditions pursuant to Section 4(l)(2)(B) of the UC Law:

1. The individual has been and will continue to be free from control or direction over the performance of the services involved, both under his or her contract of service and in fact, and
2. As to these services, the individual is customarily engaged in an independently established trade, occupation, profession or business.

Only if both of these conditions are met to the satisfaction of the department will the individual be regarded as an “independent contractor.” Unless and until those criteria are met, the services will be “employment” subject to the coverage of UC law. Additionally, a written agreement between a worker and the business does not control the worker’s status.

Moreover, the Pennsylvania Department of Labor & Industry also enforces the Construction Workplace Misclassification Act (Act 72 of 2011), which provides additional requirements if a worker performs services in the construction industry. In these cases, a worker will be designated as an

independent contractor only if the worker (1) has a written contract to perform such services, (2) is free from direction or control over performance of the services both under the contract of service and in fact, and (3) is customarily engaged in an independently established trade, occupation, profession or business. To provide that a worker is customarily engaged in an independently established trade, occupation, profession or business, the employer must substantiate the workers:

- possess the essential tools, equipment and other assets necessary to perform the services independent of the person for whom the services are performed
- realize a profit or suffer a loss as a result of performing the services
- perform the services through a business in which the individual has a proprietary interest
- maintain a business location that is separate from the location of the person for whom the services are being performed
- have previously performed the same or similar services for another person while free from direction or control over performance of the services both under the contract of service and in fact, or the individual must hold themselves out to another person as available and able, and in fact is available and able, to perform the same or similar services while free from direction or control over performance of the services
- maintain liability insurance during the contract term of at least \$50,000

The following factors are not considered in determining “independent contractor” status:

- The failure to withhold Federal or State income taxes; or
- pay unemployment compensation contributions or workers’ compensation premiums with respect to an individual’s remuneration

Furthermore, misclassification of employees as independent contractors is illegal for all commercial and residential construction in Pennsylvania.

The following is also prohibited:

1. An employer may not retaliate against any person who exercises rights under the law, including the filing of a complaint or informing another about an employer’s noncompliance with the Act.
2. An employer may not require or demand that an individual enter into an agreement or sign a document which results in the improper classification of that individual as an independent contractor.
3. An employer may not intentionally contract with another employer knowing that the employer intends to misclassify employees.

Pennsylvania’s UC Law requires an examination of the facts to determine if the worker is a legitimate independent contractor. Whether the services are performed on a full-time or part-time basis is immaterial to an individual’s employment status.

An investigation into an individual’s employment status may occur in connection with a UC claim filed by an individual who asserts that they were an employee rather than an “independent contractor.” Also, the Office of Unemployment Compensation Tax Services randomly selects businesses for audit to verify compliance with the UC Law.