

It's really the nature of the business in construction. Whether you are a brick mason, a carpenter, a painter, a plumber

 , or even

 a landscaper

 , from time to time you will find yourself in the position of

needing to hire a subcontractor.

But how you define an independent contractor and the way the law and the insurance industry define this term might be very different.

It is important for you to get this right, not only for your

 workers compensation

 and

 general liability insurance

 , but also for the protection of your business and perhaps your personal assets.

And here is a clue – you don't get yourself off the hook simply by providing a 1099 instead of a W2.

It is very important that you handle the interaction of your general liability insurance policy and your work ers compensation insurance policy with your subcontractors.

I have covered strategies of this type in previous blogs, whether it be the impact on your insurance audits, or the increased risks that subcontractors add to your business.

This article is not intended to tackle those areas.

Instead, here I want to really focus on the definition of an independent contractor so that you don't make the mistake of treating an employee as an independent contractor and increase your business risks as a result.

While there is no clear basis for making the determination of who is an employee and who is an independent contractor in the eyes of the law, here are a few relevant factors that you should consider.

Who sets the hours of work? If the employer does, then it is more likely that the worker will be determined to be an employee.
training for the job? Does the employer provide
points more to an employer/employee relationship. If so, this

Is the worker paid by the job, or paid by the hour.

Hourly workers are much more likely to be viewed as employees.

Can the person work for more than one firm at a time?

If not, perhaps they are really an employee.

Who furnishes the tools or materials needed for the job?

If it is your company, then you may be dealing with an employee, rather than an independent contractor.

Is the work part of the regular business of the employer?

This one seems a bit vague but if you are hiring people to do the regular and usual work of your company, then they are most likely employees.

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