

Independent Contractors/Employees – Summary

Effect of a determination. Whether a person is an independent contractor or employee determines if the person is covered for purposes of workers' compensation and unemployment benefits and whether industrial insurance premiums and unemployment taxes must be paid by the employer. The classification also determines whether a person pays B&O taxes.

Terminology. For unemployment and industrial insurance purposes, the question is more precisely whether a person is "covered" or "not covered." This is because 1) the term "independent contractor" is not used in statute, and 2) industrial insurance laws cover some independent contractors (those who provide "personal labor.")

Analysis. The starting point for analysis is that there is a presumption that a worker is covered by industrial and unemployment insurance. To qualify as an independent contractor who is not covered requires meeting one of a number of different statutory "exception" tests. Some of these tests have been further interpreted by court cases. Both unemployment and industrial insurance laws also contain additional exemptions for certain industries/employments.

Unemployment and industrial insurance share two exception tests – the contractor exception and the "six-part" test exception. They differ in that unemployment insurance laws also contain an "ABC" test exception and industrial insurance law covers independent contractors who provide "personal labor" (and consequently does not cover contractors who do not provide "personal labor.") The departments also take slightly different approaches in analyzing relationships.

Whether a person is covered or exempt requires applying the statutory tests to all the facts and circumstances of each specific relationship. The fact that a person received a 1099, has a UBI and/or contractor registration number, and/or has a written contract does not necessarily make a person an independent contractor.

Court cases have held that for industrial insurance purposes, if a person has their own employees or provides equipment other than hand tools and is not being directed and controlled like an employee, the person is an exempt independent contractor.

Because of the different tests and analyses, it is possible to be treated differently for unemployment and industrial insurance purposes. However, according to the departments, in most cases the same result will be reached.

For purposes of B&O taxes, employees (as opposed to independent contractors) are not subject to tax. The Department of Revenue has adopted rules listing conditions indicating whether a person is an employee or engaged in business.

Attached to this summary are a:

1. Table comparing the laws,
2. Diagram of the independent contractor/employee analysis, and
3. Copy of referenced laws/rules.

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