

Employee or Independent Contractor?



Employee or Independent Contractor?

Employers often utilize independent contractors as a way to save money and avoid the payment of employment taxes. As an employer, it is critical to correctly determine whether individuals rendering services are employees or independent contractors. Failing to properly classify workers may result in additional premiums, penalty and interest charges.



The ABC Test:

To be considered an independent contractor for Tennessee unemployment insurance purposes, an individual must meet all three of the following conditions:

1. The individual has been and will continue to be free from control and direction in connection with the performance of the service, both under any contract for the performance of service and in fact.
2. The service is performed either outside the usual course of business for which the service is performed, or is performed outside of all the places of business of the enterprise for which the service is performed.
3. The individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.

If you have questions about the classification of workers, the Tennessee Department of Labor and Workforce Development has information available on its website www.tn.gov/workforce or you may contact the department to speak with a tax auditor.



Employers Who are Liable to Pay Unemployment Taxes Include the Following:

- An employing unit that is liable under the Federal Unemployment Tax Act (FUTA) and has at least one employee in Tennessee regardless of the number of weeks employed or amount of payroll.
- An employing unit that pays \$1,500 or more in total gross wages in a calendar quarter, or has at least one employee during twenty different weeks in the current or preceding calendar year regardless of the wages. The employee does not have to be the same person for twenty weeks. It is not relevant if the employee is full-time or part-time.
- An employer who has acquired all or part of the business of another employer who was already liable.
- An employing unit that is a non-profit organization as described under section 501(c) (3) of the IRS code and has four or more employees during each of 20 weeks in the current or preceding calendar year.
- All state and local government units and political subdivisions.
- An employing unit that paid cash wages of \$1,000 or more in any calendar quarter of the current or preceding calendar year for domestic services.



An Employing Unit Engaged in Agricultural Labor is Liable if:

- It employs 10 or more employees for 20 weeks or more in the current or preceding calendar year.
- It pays \$20,000 or more in gross wages in a calendar quarter.



Report Suspected Unemployment Insurance Tax Fraud:

- Call 615-741-2346.
- Visit tn.gov/workforce and search "UI Tax Fraud".