

Florida Today article 9-6-12 (Employee or contractor: It does matter)

### Independent Contractors vs. Employee

I want to add more people to my business, but paying payroll taxes is costly. Can I bring someone on and pay them as an independent contractor, give them a 1099 and make them responsible for the taxes?

This is another very timely question; however, I would caution you to do the right thing. This is a very hot topic for the IRS and could be a very costly item for you if you do not choose the right status for new workers you hire. You could be liable for payroll taxes, penalties and interest for multiple years should the IRS reclassify your workers as employees.

Per the IRS website: "The IRS uses three characteristics to determine the relationship between businesses and workers. 1) Behavioral Control covers facts that show whether the business has a right to direct or control how the work is done through instructions, training or other means. 2) Financial Control covers facts that show whether the business has a right to direct or control the financial and business aspects of the worker's job. 3) Type of Relationship factor relates to how the workers and the business owner perceive their relationship."

Here are some questions to answer when trying to determine the proper classification of a worker as an independent contractor vs. employee. Do they provide their own tools? Are they working for more than one person? Are they at risk of losing money on the job (i.e. can they show a profit or loss)? Can they work on their own schedule (i.e. not yours)? Do they get to choose how the work gets done (i.e. you do not get to tell them how to do the job)? If you can answer yes to these questions, then there is a good chance they are independent contractors. Otherwise, they are your employees and you are responsible for paying the payroll taxes and any required benefits.

If you have been misclassifying your employees, the IRS has created what is called Section 530 relief. This is also known as the Voluntary Classification Settlement Program. To be eligible for the program you must have classified your workers consistently as independent contractors and you must have filed all appropriate and required Forms 1099. Please see Form 8952 and consult your tax advisor to see if you are eligible and the benefits of participation.