



LINDENBUSCH
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EMPLOYEE VS INDEPENDENT CONTRACTOR

The misclassification of worker compensation is also reaping much larger penalties. In the past it has been on a case by case facts and circumstances basis but the Tax Courts and the IRS have codified a number of criteria that distinguish an employee (W-2) from independent contractor (1099 misc). The Tax Court considers seven factors:

1. The degree of the firm's (or person's) control over the worker
2. The worker's investment in work facilities
3. Profit or loss potential for the worker
4. The degree of ease with which the firm or person can discharge the worker
5. The degree of integration of the worker's services to the firm's (or person's) principal function
6. The temporary or permanent nature of the relationship
7. The parties' understanding of the nature of their relationship

In Revenue Ruling 87-41 there is a RIGHT TO CONTROL "Twenty Factor" test which is an IRS guide that taxpayers should also consider along with the above Tax Court factors.