

Understanding the Differences: Independent Contractors And Employees Employment Law Series

Are you self-employed or looking to hire someone for a project but unsure whether to classify them as an independent contractor or an employee? The distinctions between the two can be confusing, and not understanding the nuances can have serious legal implications. In this Employment Law series, we will explore the differences between independent contractors and employees and equip you with the knowledge to make informed decisions.

Why is the Distinction Important?

Classifying a worker as an independent contractor or an employee is crucial because it affects their legal rights, as well as your responsibilities as an employer. The classification determines eligibility for benefits, taxation, liability, and compliance with labor and employment laws.

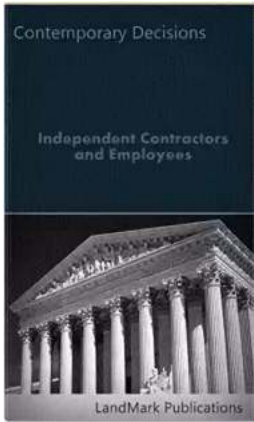
Definition of an Independent Contractor

An independent contractor is an individual or a business entity that provides services to another entity under a contract. They enjoy a higher level of autonomy and are typically not subject to direct control or supervision by the hiring party. Independent contractors often have their own tools, set their own hours, and take on multiple clients simultaneously.

Independent Contractors and Employees (Employment Law Series)

by LandMark Publications(Kindle Edition)

★★★★★ 5 out of 5



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Potential Misclassification Risks

Due to the flexibility offered by hiring independent contractors, some employers may be tempted to misclassify employees as contractors to sidestep legal obligations. However, doing so can lead to severe consequences, such as penalties, back taxes, unpaid benefits, and potential lawsuits. Government agencies are increasingly scrutinizing misclassification cases, so it pays to be aware of the rules.

The Employee Classification Criteria

While there is no universal test to determine the classification, several factors are typically considered to differentiate employees from independent contractors, including:

1. Control: Does the employer dictate how, when, and where the work should be performed? If so, the worker is more likely an employee.
2. Integration: Is the work performed an integral part of the employer's business? If yes, it indicates an employer-employee relationship.

3. Financial Control: Does the worker have the opportunity to make a profit or suffer a loss based on their own decisions? Independent contractors often have more financial control.
4. Relationship Type: Are there written contracts, benefits, or a long-term commitment between the parties? These factors suggest an employee status.

The Importance of Written Contracts

One crucial step to protect both parties involved is to have a written contract in place. The contract should clearly outline the relationship, the scope of work, payment terms, confidentiality agreements, and any other pertinent details. A well-drafted contract can help establish the intended classification and avoid potential disputes.

Benefits and Drawbacks of Hiring Independent Contractors

There are advantages and disadvantages to hiring independent contractors:

Benefits:

- Cost savings: Independent contractors are responsible for their own taxes, insurance, and benefits, reducing your administrative and financial burden.
- Flexible workforce: Contractors allow you to scale up or down quickly, providing temporary expertise without the long-term commitment.
- Specialized skills: Contractors often bring a level of expertise that may not be available within your organization.

Drawbacks:

- Control limitations: Contractors maintain more autonomy, which means you may have limited control over their work processes and outcomes.
- Availability: Depending on the market, finding a reliable and skilled contractor may prove challenging or costly.
- Loss of intellectual property: Without proper agreements in place, the work produced by contractors may not automatically become the employer's property.

Benefits and Obligations of Employee Classification

Similarly, employing individuals as full-time or part-time employees has its own benefits and obligations:

Benefits:

- Greater control: Employees are subject to direct supervision, allowing for more hands-on management and direction.
- Team cohesion: Employees often feel more connected to the organization, fostering a sense of loyalty and camaraderie among colleagues.
- Protection: Employees are entitled to benefits such as health insurance, retirement plans, and protection under labor laws.

Obligations:

- Compliance: Employers must comply with minimum wage laws, payroll taxes, and other legal requirements associated with having employees.
- Administrative overhead: Hiring employees requires additional administrative tasks, such as payroll processing, tax withholding, and providing benefits.

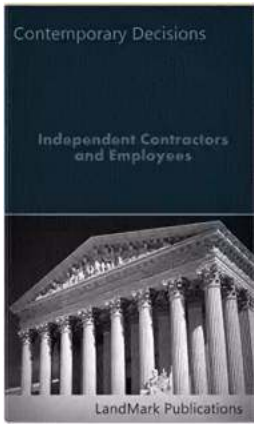
- Termination processes: Ending an employment relationship may involve severance pay, notice periods, and potential legal considerations.

Balancing the Decision: Key Considerations

Choosing between independent contractors and employees requires careful consideration based on your specific circumstances. Here are some essential factors to keep in mind:

1. Level of control: Assess the level of control you need over the work processes and outcomes.
2. Duration of work: Determine whether the work is ongoing or project-based.
3. Skills required: Evaluate the required expertise and whether it is readily available in the market.
4. Budget constraints: Consider the financial resources available for recruitment and engagement.
5. Liability concerns: Evaluate the potential risks associated with the work performed.
6. Tax implications: Consult with a tax professional to understand the tax implications associated with each classification.

Understanding the difference between independent contractors and employees is vital to avoid legal complications and ensure compliance with employment laws. While independent contractors offer flexibility and cost savings, employing individuals as employees provides greater control and benefits. It is crucial to assess the specific requirements of your project or business to make a well-informed decision.



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THIS CASEBOOK contains a selection of 127 U. S. Court of Appeals decisions that analyze and discuss distinctions and differences in rights and liabilities between the parties when an employer engages an independent contractor as opposed to an employee. The selection of decisions spans from 2004 to the date of publication.

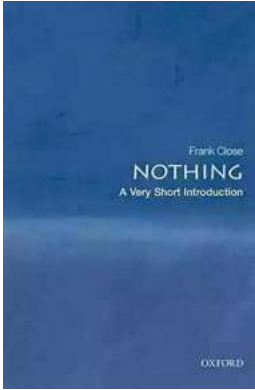
The FLSA's definition of "employee" is strikingly broad and "stretches the meaning of 'employee' to cover some parties who might not qualify as such under a strict application of traditional agency law principles." *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 326 (1992). To effect Congress's broad purpose, we must look to see whether a worker, even when labeled as an "independent contractor," is, as a matter of "economic reality," an employee. *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 729 (1947) ("Where the work done, in its essence, follows the usual path of an employee, putting on an 'independent contractor' label does not take the worker from the protection of the Act."). Ordinarily, it is the court's job to determine whether a company has inappropriately classified a worker as an independent contractor. *Werner v. Bell*

Family Med. Ctr., Inc., 529 F. App'x 541, 543 (6th Cir. 2013). However, when the evidence, viewed in the light most favorable to the plaintiff, reveals that there is a genuine issue of material fact whether the worker is an employee or an independent contractor, then summary judgment is inappropriate. See *Imars v. Contractors Mfg. Servs., Inc.*, No. 97-3543, 165 F.3d 27, 1998 WL 598778, at *6 (6th Cir. Aug. 24, 1998). In those cases, it is the task of the trier of fact to review the evidence and weigh the factors to decide whether the plaintiff-worker is economically dependent upon the defendant-company. See *Id.* *Keller v. Miri Microsystems LLC.*, (6th Cir. 2015).

Under the FLSA, only employees are entitled to overtime and minimum-wage compensation. See *Ellington*, 689 F.3d at 553. Independent contractors do not enjoy FLSA's protections. See *Rutherford*, 331 U.S. at 729. The Supreme Court has recognized, however, that businesses are liable to workers for overtime wages even if the company "put[s] . . . an 'independent contractor' label" on a worker whose duties "follow[] the usual path of an employee." *Rutherford*, 331 U.S. at 729. To carry out the remedial purpose of the FLSA, we must examine whether a business has misclassified an employee as an independent contractor. *Keller v. Miri Microsystems LLC*, *ibid.*

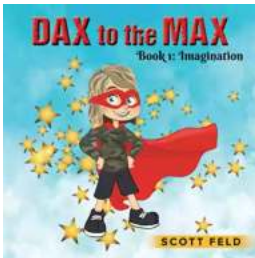
The FLSA defines an "employee" as "any individual employed by an employer." 29 U.S.C. § 203(e)(1). According to the FLSA, "[e]mploy' includes to suffer or permit to work." *Id.* § 203(g). We have interpreted this framework, in light of the legislative purpose, to set forth a standard that "'employees are those who as a matter of economic reality are dependent upon the business to which they render service.'" *Brandel*, 736 F.2d at 1116 (quoting *Carriage Carpet*, 548 F.2d at 145).

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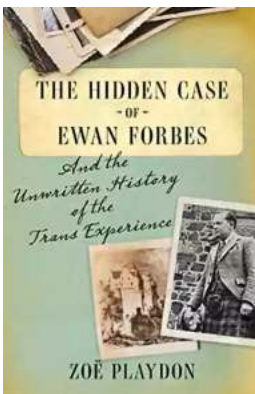
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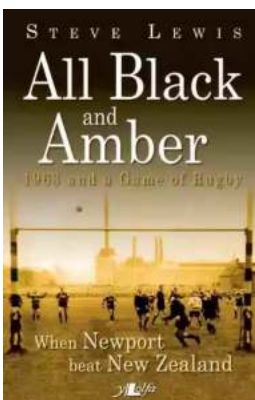
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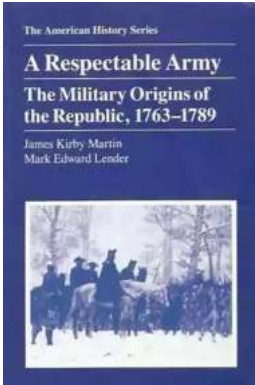
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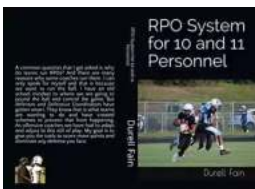
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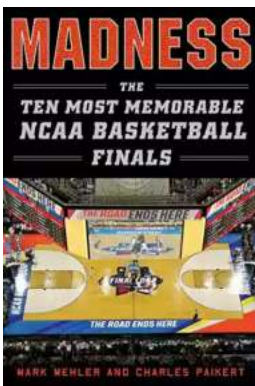
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