

Guidelines: Employee or Independent Contractor or Sole Proprietor or Subcontractor

Employee
Subcontractor
Independent Contractor
Sole Proprietor

| Criteria | | | | | Supporting Documentation |
|--|-----|--------------|------|------|--|
| Under the direction and control of the insured | Yes | No | No | No | * are they supervised by someone from the insured * are they told where to go, when to be there, what to do * are they given deadlines * are they free to complete the work according to their own methods, on their own timetable * are they free from any control other than the final product |
| Power of Dismissal | Yes | No | No | No | Can terminate employment; job application; personnel file |
| Work being performed is a part of the regular business of the insured | Yes | Not Normally | No | No | Anything showing business description - D&B; Hoover's; Accurant; SDAT; webpage |
| Paid by the Hour / Week / Salary | Yes | No | No | No | MD Quarterlies; Federal 941s |
| Paid by the Job | No | Yes | Yes | Yes | Copy of contract ; invoices |
| Are multiple individuals hired directly by the insured to perform the same trade/task/work at the same job location? | Yes | No | No | No | Ex. drywall, siding, roofing , landscaping, etc. (crew activities) |
| Maintains their own business | No | Yes | Yes | Yes | Indicia of business; business card; business phone; billing mechanism, company website |
| Works for others - makes services available to the general public | No | Yes | Yes | Yes | Yellow pages listing; business cards; Schedule C, company website |
| Has a business license | No | Yes | Yes | Yes | Copy of license |
| Insured/Employer sets work hours | Yes | No | No | No | Time cards |
| Worker devotes substantially full time to the company | Yes | No | No | No | 1) time cards 2) 1099's from other customers/clients |
| Has taxes, etc withheld | Yes | No | No | No | Federal tax return |
| Receives W2 or 1099 | W2 | 1099 | 1099 | 1099 | W2s; W3; 1096; 1099s |
| Has an investment in their company - opportunity for profit or loss | No | Yes | Yes | Yes | SDAT information |
| Submits invoices for payment | No | Yes | Yes | Yes | Invoices - review content of invoices |
| Works under contract | No | Yes | Yes | Yes | Copy of contract |
| Provides tools, materials and/or equipment | No | Yes | Yes | Yes | Invoices, contracts and proposals |
| Is provided training | Yes | No | No | No | Safety training, internal training program |
| Can have others perform the work; brings their own employees | No | Yes | Yes | Yes | |
| Maintains their own workers' compensation insurance | No | Yes | Yes | Yes | Certificate of insurance |
| Maintains General Liability insurance | No | Yes | Yes | Yes | Certificate of insurance |
| Files a signed Sole Proprietor's Exclusion form | No | No | May | Yes | Sole Proprietor Form |
| Is the worker required to complete a job or project before they can quit or get paid? | No | Yes | Yes | Yes | Copy contract agreement, AIA Agreement, release of liens |

This information is to serve as a guideline only.