

Independent contractor or employee?



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If your company uses part-time or temporary workers, your ability to classify them as independent contractors may have changed.

A recent Supreme Court of California ruling mandates a new test – known as the ABC test – to determine whether a worker performing services for a company is legitimately an independent contractor or must be classified as an employee under California’s wage orders.

Under the ABC test, an independent contractor must satisfy all three of these criteria:

- A** The worker is free from the control and direction of the hiring company in connection with the performance of the work.
- B** The worker performs work that is outside the usual course of the hiring company’s business.
- C** The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

Is your worker an employee?

Typical uses for temporary, part-time and contingent workers may not meet the definition of an independent contractor in California.

Here are some indications that your worker is an employee rather than an independent contractor:

- The worker must perform the job in a certain way, for example working under the direction of a supervisor.
- You use the worker to perform work that is similar to the work done by your employees such as if the worker augments your staff when there is a lot of work. Some examples include:
 - Temporary accountants helping an accounting firm at tax time.
 - Creative teams helping an advertising agency prepare for a pitch.
 - Software engineers helping a tech company develop software for an upcoming product release.
- The worker has no other clients or customers for whom he or she does the same work being done for your company.

The employment landscape is shifting in California. Many legal experts predict an increase in lawsuits and enforcement of policy. It's important that you understand how to accurately classify your temporary and part-time employees to avoid the risks of back taxes, penalties or interest due to misclassification.

IS YOUR COMPANY PREPARED?

HR Options provides a solution called **Outsourced Employment Services** that lets you hire the workers you need, when you need them, in a compliant way. HR Options employs your misclassified 1099 workers as W-2 workers on our payroll.



We'd be delighted to discuss your organization's needs.

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