

Business Bullet ~
EMPLOYEE OR INDEPENDENT CONTRACTOR?
HERE IS WHAT YOU NEED TO KNOW

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Lowes recently settled a \$2.85 million-dollar worker classification lawsuit. The suit claimed that Lowes misclassified installers as independent contractors depriving them of workers' compensation, liability insurance and requiring the workers to pay taxes as self-employed. The suit and settlement underscore the importance of properly classifying workers. Making the wrong determination may have serious financial and legal consequences. The following guide will help you understand the primary distinctions between an employee and a contractor.

Worker Classifications - There are four worker classifications made by the IRS.

1. **Independent Contractor** – Under common law, an independent contractor controls the kind of work they take on and how they complete the work. In this circumstance the business hiring them to complete the work would only control the result or product. While you may set deadlines for an independent contractor you may not set specific work hours.

2. **Employee** – Under common law if you control what, when, where and how work is done, the individual you pay is considered an employee.

3. **Statutory Employee** – Some workers who meet the common-law requirements as an independent contractor may still be considered an employee due to specific statutes designating them as such. Statutory employees include:

- Individuals who work from home under specific instruction with materials you provide, which are returned to you or to someone you name;
- Food and beverage delivery drivers (milk excluded);
- Commissioned laundry and dry cleaning drivers;
- Insurance agents working primarily for one life insurance company selling life insurance or annuity contracts; and
- Full-time traveling salespersons submitting orders directly to you from businesses or wholesale establishments.

4. **Statutory Nonemployee** – Statutes deem some workers, who would otherwise be considered employees, nonemployees. These include:

- Direct sellers and real estate workers who are not paid on an hourly basis; and
- Companion sitters (private duty nurses and home health aids) not employed by a placement service.

Still unsure how to classify a worker? – In some instances it may be difficult to determine the status of a worker. The IRS does have a form, which you can complete and submit, allowing them to determine the worker's status. [Form SS-8 can be downloaded here and includes detailed instructions](#). Before filing the form consult with your LegalShield provider law firm. It may take the IRS six months or more to respond to your request.

State Regulations – Some states may classify workers differently than the IRS. In the Lowes case claims involved both federal rules and the New Jersey Construction Industry Independent Contractor Act. It is vital to understand how state regulations impact classification of employees in your industry.

Taxes & Reporting – The main purpose for classifying a worker is to determine the taxes and record keeping for which your business will be responsible.

- **Independent Contractors** - The forms and information needed for independent contractors can be found [here via the IRS](#). The IRS does offer electronic filing.
- **Employees** – The appropriate forms and tax information for employees can also be located on the [IRS website](#).

Penalties – If you fail to accurately report an employee you may be held liable for past due employment taxes. There are relief provisions in some circumstances. If you believe you have misclassified a worker or have any questions call your law firm right away.



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