

Employee or Independent Contractor



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What's the Difference and Why Does It Matter?

Misclassifying employees as “independent contractors” can get a nonprofit financial hot water with the U.S. Department of Labor, the applicable state DOL or both. If federal or state regulators determine the nonprofit has mistakenly misclassified employees as contractors, enforcement personnel may hold the nonprofit responsible for applicable back overtime, plus tax withholdings, employer contributions and potential penalties.

The IRS has developed and uses a 20 Factor Test to investigate contractor status. Different states may weigh some of the factors differently, but the 20 Factor Test is a good starting point. For example, the Web site for the New York Department of Labor indicates, “You are an employer if you control what will be done and how it will be done, i.e, the manner, means and results.”

An easy-to-understand chart of the 20 factors and additional guidance on this topic are available in [*Taking the High Road, A Guide to Effective and Legal Employment Practices for Nonprofits, 2nd Edition*](#).

Remember: It's not what you call workers that matters; it's what the workers do and how they serve your organization that counts in making the proper classification.

The Nonprofit Risk Management Center welcomes questions and comments at 703.777.3504.