

# Worker Classification

## Employment tax spotlight



Independent contractor (“IC”) classification, and the use of non-employees to perform services, is an issue that is consistently changing. The use of independent contractors has grown with the expanding gig economy so, as a result, the IRS and states have taken notice and are increasing their scrutiny of these work arrangements.

KPMG LLP’s (KPMG) Employment Tax practice can help companies identify payroll and unemployment tax issues related to their independent contractor population and the varied compliance requirements at the federal and state levels that may impact the decision in treating an individual as an independent contractor or an employee.

Independent contractor classification is a very complex issue that can result in tax, FLSA, and benefit plan exposures if handled incorrectly. Our team frequently analyzes and reviews the IC population to help our clients navigate the many factors that can influence the determination of an IC relationship. Employment Tax can assist by reviewing the existing classification process and relationships, updating procedures, and providing remediation recommendations, either proactively or in connection with M&A transactions.

Our team is also well equipped to help employers navigate the IC determination on not only a federal level but a state level as well. As states are taking a variety of stances on the issue, often different from the federal guidelines, it can be especially difficult for companies to make a determination on the IC versus employment relationship.



KPMG has summarized the key employment tax issues organizations should consider when determining if an individual can be treated as an IC.

Considerations when reviewing the independent contractor population	Potential exposure from independent contractor misclassification	Action Steps
<ul style="list-style-type: none"> <li>Are employees and ICs performing the same or similar services?</li> <li>Are the services performed outside of the usual course of the hiring entity's business?</li> <li>What criteria is used to identify an IC? (e.g., Required to have an FEIN, liability insurance, etc.)</li> <li>Is there a contract signed by the IC that clearly identifies responsibilities and has specific term limits?</li> <li>Are ICs restricted from performing services in the open market?</li> <li>Are ICs able to set their own schedule? Do they receive direction and control on how to perform services?</li> <li>Are the ICs located in a state that has enacted an "ABC" test? (e.g., California, Illinois, New Jersey, etc.)</li> </ul>	<p>Under an audit reclassification, the assessment could include the tax liability, applicable penalties and interest for unpaid employment taxes. Please note that additional penalties may apply/increase if Forms 1099 were not filed or reported properly.</p> <ul style="list-style-type: none"> <li>Federal liabilities: Employer and a portion of Employee FICA (Social Security and Medicare), federal income tax, and federal unemployment tax ("FUTA")</li> <li>State liabilities: income tax ("SIT"), state unemployment insurance ("SUI"), and state disability insurance ("SDI")</li> </ul> <p>Other concerns:</p> <ul style="list-style-type: none"> <li>Fair Labor Standards Act ("FLSA") Issues</li> <li>Benefit Plan exposure</li> </ul>	<p>Onboarding process:</p> <ul style="list-style-type: none"> <li>Clarifying process for onboarding ICs (i.e., decision tree, standard criteria)</li> <li>Identifying compliance gaps and methods of remediation</li> <li>Updating company policy and related IC contracts</li> </ul> <p>Review of existing IC population:</p> <ul style="list-style-type: none"> <li>Determining if the current IC population risk poses a financial or reputational concern for the company</li> <li>Review of the states in which ICs are currently located</li> </ul> <p>Remediation options:</p> <ul style="list-style-type: none"> <li>IRC Section 530 Relief (i.e., Safe Harbor rules)</li> <li>Worker Classification Settlement Program</li> <li>Voluntary Classification Settlement Program</li> </ul>

## Contact us

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