

US Youth Soccer Position Paper on Independent Contract Labor

There has been an age old argument about what is and what is not independent contract labor. The Internal Revenue Service has said it will look at this on a case by case basis. Congress has added a law, Section 530 of the Revenue Act of 1978, causing even more confusion.

US Youth Soccer would like to give you some guidelines and explain their position.

How many of you have had your house repaired by someone else or had it built or renovated by someone else? How much control did you have over the contractor? If you are like me you had very little control and you just hoped they would finish it in a reasonable time. You probably signed a contract with the person or company that outlined what is each of your responsibilities. You probably have signed contracts with your accountant, lawyer and other professionals. If these people practice as individuals and not corporations they are independent contract labor. Our question is - **what is the line that separates independent contractors from employees?** In this paper US Youth Soccer will try to give you some practical guidelines.

The IRS has really started to investigate the use of independent contract labor. Fines and taxes are quite high since we start with the amount paid the contractor as the net and add taxes and penalties on top of that figure. The IRS looks at three types of control:

1. Behavioral Control
 - a. Instruction.
 - 1.) When and where to do the work.
 - 2.) What tools or equipment to use.
 - 3.) What workers to hire or assist with the work.
 - 4.) Where to purchase supplies, materials, or services.
 - 5.) What order sequence to follow.
 - b. Training.

We give instruction to independent contractors as well as employees. Normally we only give independent contractors a time line and actually define where and when for employees. We instruct employees on what tools and equipment to use sometimes, but independent contractors use the tools and equipment they have or we provide to get the end result without a lot of instruction. Independent contractors usually use their discretion on the number and the technical knowledge of their assistants. Independent contractors and employees are sometimes told where to purchase supplies, materials or services but independent contractors can sometimes chose on their own. Contracts can specify what order sequence to follow as we can with employees. We usually train employees but can also train independent contractors. We usually do not pay independent contractors to train.

2. Financial Control
 - a. Unreimbursed business expenses.
 - b. Significant investment in business by independent contractor.
 - c. Number of customers of independent contractor.
 - d. Payment.
 - e. Profit or Loss.

Independent contractor usually has costs that are unreimbursed and would indicate they are independent of any of their customers (i.e. rent). Independent contractors usually have some investment in their business for equipment, start-up costs, etc. Independent contractors usually have more than one customer or are at least advertising for more customers. Independent contractors are usually paid a flat fee or a fee based on **performance**. Independent contractors usually make decisions that affect the bottom line and have a chance of having a loss based on those decisions.

3. Type of Business Relationship
 - a. Written contract.
 - b. Employee benefits.
 - c. Discharge/termination.
 - d. Continuing relationship.
 - e. Regular business activity.

The written contract is a must because it helps explain the intent of the parties but it is not sufficient in itself. Independent contractors usually do not get benefits. If it is easy to discharge or terminate the relationship probably tends to be more of an employee relationship but not necessarily. Usually contracts have a definite length but not a factor by itself. If individual's services are key to business usually an employee but a weak argument on its own.

What this all boils down to is that the more focused the control; the more likely you are to have an employee. Most of these points can be specified in the contract and therefore does not make them automatically an employee. The IRS looks at each case on its own merits and no single control will cause you to lose independent contract labor status but collectively they might.

A position paper on independent contract labor would not be complete without a discussion of Section 530 of the Revenue Act of 1978 as revised.

Basically, Section 530 allows us to call workers independent contractors if we meet these guidelines:

1. The employer always treated the worker as an independent contractor.
2. The employer filed all returns (including information returns) required for the worker for all periods after 1978 and the returns were all consistent with independent contractor status; and
3. The employer had a reasonable basis for treating the workers as an independent contractor.

In explanation, you can not take someone who was a W-2 employee and change them to independent contractor status under the same job and get Section 530 protection.

You must file on time all 1099's timely and consistently (all workers under the same classification receive 1099's).

Reasonable basis for treating the worker as an independent contractor are as follows:

1. Judicial precedent, published rulings, or technical advice or letter ruling to the employer;

2. A past IRS audit in which no assessment was made on account of improper treatment of similar workers even if the audit was not related to employment tax matters; or
3. A long-standing recognized practice of a significant segment of the industry in which the individual worked. No fixed length of time will be required and in no case will an employer be required to show that the practice is followed by more than 25% of the industry.
4. You relied on the advice of a business lawyer or accountant who knew the facts about your business.

If you meet the Section 530 provisions then the IRS has to stop auditing. They must check Section 530 provisions before they audit independent contractor expense according to the IRS audit program. Section 530 relief usually fails because of the 1099 filing requirements.

The IRS has a form number SS-8 which is called Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding. If you submit this form the IRS will tell you whether the independent contractor is in fact an independent contractor or employee. The IRS tends to be on the conservative side or employee side on their answers.

The Position of US Youth Soccer

1. You need to have a written contract (model contract attached but you must enter relevant or remove irrelevant parts).
2. You should have a local business attorney to review your contract for provisions and legal advice on state law. For example, some states require worker's compensation to be paid for independent contract labor.
3. You need to get a W-9 or similar information on each person you pay independent contract labor even if it is under the \$600 filing requirement.
4. You need to give a 1099-MISC for every person you paid over \$600 during the year. You also need to file copies of 1099-MISC and 1096 Annual Summary and Transmittal of U. S. Information Returns by February 28 of each year. There are no extensions allowed to meet Section 530 relief. You must send each independent contractor a copy of their 1099.
5. If you have doubt as to whether others are paying contract labor in any working position, please call the US Youth Soccer office and have a detailed description of the job you need to classify and a copy of the pending contract.
6. Do not use words such as employee, wage, employer, etc. when referring to your relationship in your contracts with independent contractors. (a contractor is not an employee, does not receive wages and you are not an employer.)
7. Even foreign contractors who are legal have a legal identification number for the W-9 and must fill out one.
8. You must give 1099 even to people you pay cash.
9. You can not abrogate your responsibility to someone else. (Give to a parent to give to referees or coaches).