

Ask SCORE...

Counselors to Naples Area Small Businesses

SCORE Naples
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By: *Gray Poehler, Business Counselor*

IRS – Independent Contractors vs. Employees

QUESTION: *I am a general contractor and am uncertain as to how the Internal Revenue Service will view my relationship with sub contractors. Are they employees or independent contractors?*

Cecil M, Naples

ANSWER: *Cecil, in answer to your question, allow me to quote excerpts from the IRS web site www.irs.gov/businesses/small/article/0,,id=99921,00.html*

The question of who is an independent contractor seems to be a constant source of confusion among many small business owners. One popular notion is that if an individual signs an independent contractor agreement, the general contractor or employer has nothing to fear from the Internal Revenue Service. Such an agreement is not worth the paper it is written on unless it meets certain criteria established by IRS.

In determining whether the person providing the service is an employee or independent contractor, all information that provides evidence of the degree of control and independence must be considered. If you incorrectly classify an employee as an independent contractor, you can be held liable for employment taxes for that worker, plus a penalty.

Who is an Independent Contractor? A general rule is that you, the payer or general contractor, have the right to control or direct only the result of the work done by an independent contractor, but not the means and methods of accomplishing the result.

Example: Jim, an electrician, submits a job estimate for electrical work at \$16 an hour for 400 hours. He is to receive \$1,280 every two weeks for the next 10 weeks. This is not considered payment by the hour, even if he works more or less than 400 hours to complete the job. He comes and goes according to his own schedule and performs the agreed upon work without your supervision. He also performs additional

electrical installations under contract with other general contractors. Jim meets the definition of an independent contractor.

You may be required to file information returns to report certain types of payments made to independent contractors during the year. IRS Form 1099-MISC, is required to report payments of \$600 or more to persons not treated as employees for services performed for your trade or business.

Who is an employee? Under common-law rules, anyone who performs services for you is your employee if you can control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed.

Example: John is a salesperson employed on a full-time basis by an auto dealership. He works six days a week and is on duty in the dealer's showroom on certain assigned days and times. He appraises trade-ins, but his appraisals are subject to the approval of the sales manager. He has to develop leads and report results to the sales manager. Because of John's experience, he requires only minimal assistance in closing and financing sales. He is paid a small salary, commissions and is eligible for prizes and bonuses for exceeding sales goals. The dealership also pays the cost of life and health insurance. John meets the definition of an employee and his employer must report and provide him with an annual IRS Form W-2 stating all forms of compensation. Also all federal and state income taxes withheld and employer matching FICA taxes.

Additionally, the IRS web site provides information on statutory employees and statutory non-employees as well as links to other related subjects. Assistance is also provided by the Naples Chapter of SCORE, counselors to America's small businesses. Counseling is always FREE of charge. Just call 239-430-0081 or visit www.scorenaples.org and click on "request counseling NOW as a first time client." The SCORE business office is located at 900 Goodlette Road North, in the Fifth Third branch bank building. Office hours are 9:00 am to Noon, Mondays through Fridays.

If you would like the answer to your question considered for publication in this biweekly column, please fill out the form located at www.scorenaples.org/askscore. A SCORE counselor will contact you within 48 hours. Please include your name, email address and a contact phone number.