

Employee vs. Independent Contractor

Employer misclassification has a direct impact on employee eligibility for benefits, taxation and legal protections such as minimum wage and overtime rights. Answer these six factors to determine if your public garden is classifying employees correctly....

On July 15, 2015, the U.S. Department of Labor (DOL) issued an [administrative interpretation](#) clarifying how an employer determines whether a worker is an employee or an independent contractor.

The DOL has expressed growing concern over employee misclassification since it can have a direct impact on employee eligibility for benefits, legal protections (such as minimum wage and overtime) and taxation.

Although several tests exist for determining whether to classify a worker as an employee or independent contractor, the DOL has traditionally favored the economic realities test. This test seeks to determine whether a worker is economically dependent on his or her employer or whether the worker is in business for him- or herself. The DOL's position is that if a worker is economically dependent on the employer, the worker should be classified as an employee and entitled to all the legal protections associated with being an employee.

Six Factors

The DOL outlines six factors for employers to consider when applying the economic realities test:

1. Is the work an integral part of the employer's business?
2. Does the worker's managerial skill affect the worker's opportunity for profit or loss?
3. How does the worker's relative investment compare to the employer's investment?
4. Does the work performed require special skill and initiative?

5. Is the relationship between the worker and the employer permanent or indefinite?

6. What is the nature and degree of the employer's control?

In its administrative interpretation, the DOL emphasized that no one factor is determinative, and the factors should not be applied in a mechanical fashion. The DOL encourages employers to use the six-factor test as a guide within the context of the Fair Labor Standard Act's (FLSA) definition of employment in their efforts to classify workers correctly.


According to the DOL, under the economic realities test, most workers are employees subject to the FLSA. You are strongly encouraged to review worker classifications at your organization. The DOL's focus on worker classification, in conjunction with its recent proposed rule regarding the FLSA white collar exemptions, means employers should be prepared for aggressive DOL enforcement of these issues.

For more clarification on employee vs. independent contractor for your public garden, contact Sharon Van Loon or Kim Slager.

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