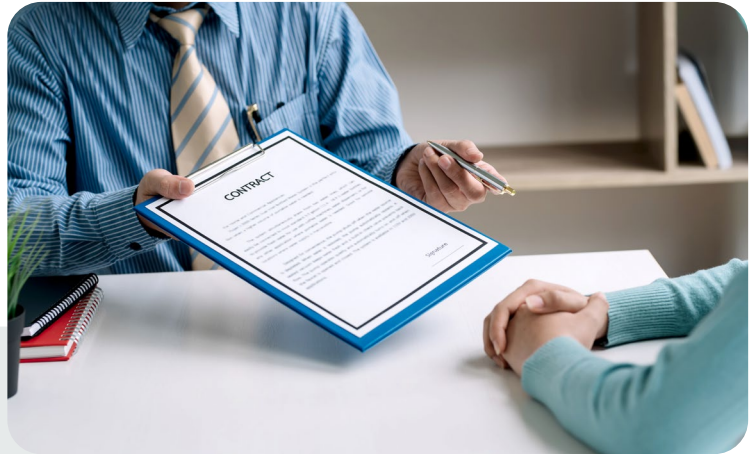




# Employer ADVISOR

SUMMER 2024



## EMPLOYEE OR INDEPENDENT CONTRACTOR?

DID YOU KNOW the U.S. Internal Revenue Service (IRS) and the U.S. Department of Labor (DOL) both have their own rules for distinguishing independent contractors from employees? The Utah Unemployment Insurance program is regulated by DOL, so our rules for determining if a worker is an independent contractor or employee reflect the DOL rules. These links will help ensure you are in compliance:

- [DOL](#)
- [IRS](#)

Utah's rule defines an independent contractor as **a worker who is customarily engaged in an independently established trade, occupation, profession or business of the same nature as the services performed, and the individual providing the services is free from the employer's control and direction while performing services for the employer.** A worker must clearly establish their status as an independent contractor by taking steps that demonstrate independence and indicating an informed business decision has been made.

Utah law — by default — considers all workers to be employees for the purposes of unemployment insurance, unless exempt by law or the company shows the worker is an independent contractor. To do this, the company must clearly establish that the worker was independently established and free from

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## ECONOMIC INSIGHTS FOR EMPLOYERS

We have tools to help employers understand Utah's economy and make data-driven decisions. You can:

- Compare your wages to Utah averages
- Find employers and data by industry
- Estimate the number of job seekers in your area
- Compare county labor forces profiles
- See current unemployment and employment data
- See projected employment growth by industry
- And more!

To explore this data, visit our [Economic Data for Employers](#) page.

**jobs.utah.gov**

americanjobcenter®

Post your jobs online:  
[jobs.utah.gov/employer](https://jobs.utah.gov/employer)

Occupational wage data:  
[jobs.utah.gov/wi](https://jobs.utah.gov/wi)

*Equal opportunity employer/programs*

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control or direction by the company. [Reference Utah Employment Security Act 35A-4-204(a) and (b) and Utah Administrative Code, R994-204-301, 302 and 303.] For a summary of the factors Utah uses to determine if a worker is an independent contractor or employee, check

out the [Guidelines for Employment Status](#) section of the Employer Handbook.

Below are some of the many pervasive myths about misclassifying employees as independent contractors.

### Pervasive myths about misclassifying employees as independent contractors:



**MYTH:** A 1099 tax form is issued by the business owner and this makes the worker an independent contractor.

**MYTH:** The business owner wants the worker to be an independent contractor, so that means the worker cannot be an employee.



**MYTH:** The worker has been an independent contractor for years; this means the person will continue to be an independent contractor.



**MYTH:** Having a worker sign an independent contractor agreement makes the worker an independent contractor.



**MYTH:** The worker is an independent contractor because it is an established practice in my industry to classify this type of worker as an independent contractor.



**MYTH:** If a worker is not on payroll, they are not an employee.

**MYTH:** Anyone who teleworks or works off-site is an independent contractor.



**MYTH:** If my worker is an independent contractor under one law, the worker is an independent contractor under other laws.

## WHAT HAPPENS WHEN BUSINESSES AND WORKERS MISCLASSIFY THEIR RELATIONSHIPS?

UTAH'S UNEMPLOYMENT INSURANCE program does not monitor business compliance with DOL and IRS independent contractor rules. It is worth mentioning that if DOL and IRS rules are not followed, businesses could be out of compliance with the Fair Labor Standards Act for failing to pay minimum wage and proper overtime. Businesses could also run into trouble for failing to follow the Family and Medical Leave Act. This failure could result in civil and criminal penalties.

In addition, businesses must withhold income tax, Medicare taxes, Social Security tax and unemployment wages from employee paychecks. Businesses must give employees W-2 statements and independent contractors 1099 forms. If businesses have the wrong classification for their workers, they could be subject to tax penalties and they could miss certain deductions.

When an employee is misclassified as an independent contractor, it hurts law-abiding business owners who properly

classify employees. Utah's Unemployment Insurance program audits employers to ensure Utah rules are being followed. Misclassifying workers as independent contractors also denies workers the benefits and protections (such as unemployment insurance) for which they may be eligible.

If you would like to chat with a representative about Utah's unemployment insurance independent contractor determinations, click the "Live Chat" button [here](#). If you have questions about the DOL or IRS independent contractor rules please contact a tax professional.



**During the past year, our audits found that the majority of Utah business owners complied with state law in treating and reporting their workers as employees for state unemployment insurance coverage.**