

# IRS News Release

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Media Relations Office

Washington, D.C.

Media Contact: 202.317.4000

[www.irs.gov/newsroom](http://www.irs.gov/newsroom)

Public Contact: 800.829.1040

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## Payments to Independent Contractors

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The Internal Revenue Service reminds employers to correctly determine whether workers are employees or independent contractors.

Generally, employers must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to employees. Business owners do not generally have to withhold or pay any taxes on payments to independent contractors.

### Determining Whether the Individuals Providing Services are Employees or Independent Contractors

Before a business can determine how to treat payments for services, they must first know the business relationship that exists between the business and the person performing the services. The person performing the services may be -

- An [independent contractor](#)
- An [employee](#) (common-law employee)
- A [statutory employee](#)
- A [statutory nonemployee](#)

### Common Law Rules

Facts that provide evidence of the degree of control and independence fall into three categories:

1. [Behavioral](#): Does the business owner control or have the right to control what the worker does and how the worker does his or her job?
2. [Financial](#): Are the business aspects of the worker's job controlled by the business owner? (these include things like how the worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
3. [Type of Relationship](#): Are there written contracts or employee type benefits such as pension plan, insurance or vacation pay? Will the relationship continue and is the work performed a key aspect of the business?

### Form SS-8

If, after reviewing the three categories of evidence, it is still unclear whether a worker is an employee or an independent contractor, [Form SS-8, Determination of Worker Status](#)

[for Purposes of Federal Employment Taxes and Income Tax Withholding](#) (PDF) can be filed with the IRS. The form may be filed by either the business or the worker. The IRS will review the facts and circumstances and officially determine the worker's status.

Be aware that it can take at least six months to get a determination, but a business that continually hires the same types of workers to perform particular services may want to consider filing the [Form SS-8](#) (PDF). There is no fee for requesting an SS-8 determination letter.

## **Employment Tax Obligations**

Once a determination is made (whether by the business or by the IRS), the next step is filing the appropriate forms and paying the associated taxes.

- [Forms and associated taxes for independent contractors](#)
- [Forms and associated taxes for employees](#)

## **Misclassification of Employees**

### **Consequences of Treating an Employee as an Independent Contractor**

If a business classifies an employee as an independent contractor and they have no reasonable basis for doing so, they may be held liable for employment taxes for that worker and the relief provisions, discussed below, will not apply.

### **Relief Provisions**

If a business has a reasonable basis for not treating a worker as an employee, they may be relieved from having to pay employment taxes for that worker. See [Publication 1976, Section 530 Employment Tax Relief Requirements](#) (PDF) for more information.

### **Misclassified Workers Can File Social Security Tax Form**

Workers who believe they have been improperly classified as independent contractors by a business can use Form 8919, Uncollected Social Security and Medicare Tax on Wages to figure and report the employee's share of uncollected Social Security and Medicare taxes due on their compensation. See the full article [Misclassified Workers to File New Social Security Tax Form](#) for more information.

### **Voluntary Classification Settlement Program**

The [Voluntary Classification Settlement Program \(VCSP\)](#) is an optional program that provides taxpayers with an opportunity to reclassify their workers as employees for future tax periods for employment tax purposes with partial relief from federal employment taxes for eligible taxpayers that agree to prospectively treat their workers (or a class or group of workers) as employees. To participate in this voluntary program, the taxpayer must meet certain eligibility requirements, apply to participate in the VCSP by filing [Form 8952](#), Application for Voluntary Classification Settlement Program, and enter into a closing agreement with the IRS.

