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Grow Your Business



# Music Lessons: Your Big Questions Answered

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**How should I organize my teaching program?**

**Employees, Independent  
Contractors or other?**

# Employee or Independent Contractor?

## Read the IRS Employer's Supplemental Tax Guide

<http://ow.ly/NspDe> (pg. 7)



Department of the Treasury  
Internal Revenue Service

### Publication 15-A

Oct. No. 21453T

# Employer's Supplemental Tax Guide

(Supplement to  
Publication 15 (Circular  
E), Employer's Tax Guide

your business and not for another business, you may still be entitled to the relief provision.

**Test proctors and room supervisors.** The consent-treatment requirement does not apply to services performed after December 31, 2006, by an individual as a test proctor or room supervisor assisting in the administration of college entrance or placement examinations if the individual:

- is performing the services for a section 501(c) organization exempt from tax under section 501(a) of the code, and
- is not otherwise treated as an employee of the organization for employment taxes.

**Voluntary Classification Settlement Program (VCSP).** Employers who are currently treating their workers (or a class or group of workers) as independent contractors or other nonemployees and want to voluntarily reclassify their workers as employees for future tax periods may be eligible to participate in the VCSP if certain requirements are met. To apply, use Form 8952, Application for Voluntary Classification Settlement Program (VCSP). For more information, visit [IRS.gov](http://IRS.gov) and enter "VCSP" in the search box.

## 2. Employee or Independent Contractor?

An employer must generally withhold federal income taxes, withhold and pay over social security and Medicare taxes, and pay unemployment tax on wages paid to an employee. An employer does not generally have to withhold or pay over any federal taxes on payments to independent contractors.

### Common-Law Rules

To determine whether an individual is an employee or an independent contractor under the common law, the relationship of the worker and the business must be examined. In any employee-independent contractor determination, all information that provides evidence of the degree of control and the degree of independence must be considered.

Facts that provide evidence of the degree of control and independence fall into three categories: behavioral control, financial control, and the type of relationship of the parties. These facts are discussed next.

**Behavioral control.** Facts that show whether the business has a right to direct and control how the worker does the task for which the worker is hired include the type and degree of:

**Instructions that the business gives to the worker.** An employee is generally subject to the business' instructions about when, where, and how to work. All of the following are examples of types of instructions about how to do work.

- When and where to do the work.
- What tools or equipment to use.
- What workers to hire or to assist with the work.
- Where to purchase supplies and services.
- What work must be performed by a specified individual.
- What order or sequence to follow.

The amount of instruction needed varies among different jobs. Even if no instructions are given, sufficient behavioral control may exist if the employer has the right to control how the work results are achieved. A business may lack the knowledge to instruct some highly specialized professionals; in other cases, the task may require little or no instruction. The key consideration is whether the business has retained the right to control the details of a worker's performance or instead has given up that right.

**Training that the business gives to the worker.** An employee may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods.

**Financial control.** Facts that show whether the business has a right to control the business aspects of the worker's job include:

**The extent to which the worker has unreimbursed business expenses.** Independent contractors are more likely to have unreimbursed expenses than are employees. Fixed ongoing costs that are incurred regardless of whether work is currently being performed are especially important. However, employees may also incur unreimbursed expenses in connection with the services that they perform for their employer.

**The extent of the worker's investment.** An independent contractor often has a significant investment in the facilities or tools he or she uses in performing services for someone else. However, a significant investment is not necessary for independent contractor status.

**The extent to which the worker makes his or her services available to the relevant market.** An independent contractor is generally free to seek out business opportunities. Independent contractors often advertise, maintain a visible business location, and are available to work in the relevant market.

**How the business pays the worker.** An employee is generally guaranteed a regular wage amount for an hourly, weekly, or other period of time. This usually indicates that a worker is an employee, even when the wage or salary is supplemented by a commission. An independent contractor is often paid a flat fee or on a time and materials basis for the job. However, it is common in some professions, such as law, to pay independent contractors hourly.

**The extent to which the worker can realize a profit or loss.** An independent contractor can make a profit or loss.

**Type of relationship.** Facts that show the parties' type of relationship include:

- **Written contracts describing the relationship the parties intended to create.**
- **Whether or not the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay.**
- **The permanency of the relationship.** If you engage a worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence that your intent was to create an employer-employee relationship.
- **The extent to which services performed by the worker are a key aspect of the regular business of the company.** If a worker provides services that are a key aspect of your regular business activity, it is more likely that you will have the right to direct and control his or her activities. For example, if a law firm hires an attorney, it is likely that it will present the attorney's work as its own and would have the right to control or direct that work. This would indicate an employer-employee relationship.

**IRS help.** If you want the IRS to determine whether or not a worker is an employee, file Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, with the IRS.

### Industry Examples

The following examples may help you properly classify your workers.

### Building and Construction Industry

**Example 1.** Jerry Jones has an agreement with Wilma White to supervise the remodeling of her house. She did not advance funds to help him carry on the work. She makes direct payments to the suppliers for all necessary materials. She carries liability and workers' compensation insurance covering Jerry and others that he engaged to assist him. She pays them an hourly rate and exercises almost constant supervision over the work. Jerry is not free to transfer his assistants to other jobs. He may not work on other jobs while working for Wilma. He assumes no responsibility to complete the work and will incur no contractual liability if he fails to do so. He and his assistants perform personal services for hourly wages. Jerry Jones and his assistants are employees of Wilma White.

**Example 2.** Milton Manning, an experienced tile setter, orally agreed with a corporation to perform full-time services at construction sites. He uses his own tools and performs services in the order designated by the corporation and according to its specifications. The corporation supplies all materials, makes frequent inspections of his work, pays him on a piecework basis, and carries workers' compensation insurance on him. He does not have a place of business or hold himself out to perform similar services for others. Either party can end the services at any time. Milton Manning is an employee of the corporation.

**Example 3.** Wallace Black agreed with the Sawdust Co. to supply the construction labor for a group of houses. The company agreed to pay all construction costs. However, he supplies all the tools and equipment. He performs personal services as a carpenter and mechanic for an hourly wage. He also acts as superintendent and foreman and engages other individuals to assist him. The company has the right to select, approve, or discharge any helper. A company representative makes frequent inspections of the construction site. When a house is finished, Wallace is paid a certain percentage of its costs. He is not responsible for faults, defects of construction, or wasteful operation. At the end of each week, he presents the company with a statement of the amount that he has spent, including the payroll. The company gives him a check for that amount from which he pays the assistants, although he is not personally liable for their wages. Wallace Black and his assistants are employees of the Sawdust Co.

**Example 4.** Bill Plum contracted with Elm Corporation to complete the roofing on a housing complex. A signed contract established a flat amount for the services rendered by Bill Plum. Bill is a licensed roofer and carries workers' compensation and liability insurance under the business name, Plum Roofing. He hires his own roofers who are treated as employees for federal employment tax purposes. If there is a problem with the roofing work, Plum Roofing is responsible for paying for any repairs. Bill Plum, doing business as Plum Roofing, is an independent contractor.



## Running Your Educational Sessions Efficiently & Profitably

# ADMINISTRATION



Student  
Cancellations

Is this clearly  
stated in your  
policy?

Teacher  
Absences

Do you have  
a backup  
plan?

Make Up  
Lessons

How do you  
implement  
this?



**What are your tips & best practices?**

# **BILLING AND COLLECTIONS**



**How do you attract and keep good teachers?**

**TEACHERS**



**Now I'm all set up. How do I attract and keep students?**

**STUDENTS**



**What to do during summer and traditional down times?**

# **SUMMER BREAKS AND HOLIDAYS**



# QUESTIONS FOR OUR PANELISTS

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**Thank You!**