



Employee vs. Contractor: Beware of How You “Treat” Your Workers!

Presented by...

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- *Criteria* used to determine the **employment status** of a worker by most tax authorities
- *Classification* **guidance**
- *How are the States reacting?*
CA supreme court case which led to **AB5** (aka "gig-worker" rule or Uber law)





Employee



Independent
Contractor



Renter

BEWARE...

The incorrect classification can cause you to be held responsible for...

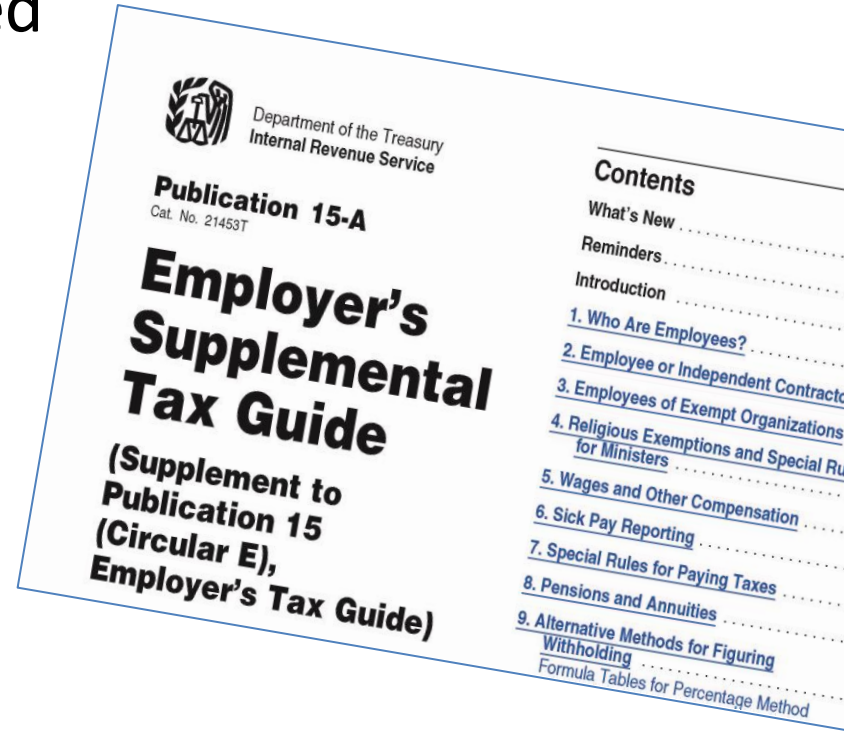
- All *back* federal & state payroll taxes
- All *back* unemployment taxes
- All *back* employment benefits

BAD...VERY BAD !!

	INDEP. CONTR.	AUDIT FINDINGS
TOTAL COMP		
EMPLOYEE FICA		
EMPLOYER MATCH FICA		
FED/ST UNEMP		
FICA PENALTY		
FAILURE TO PAY		
FAILURE TO FILE W2 PEN		
AFTER TAX CAS		



- The IRS updates Publication 15A each year with a section entitled “Who Are Employees?”
- Status is determined based on the degree of control in 3 categories:
 1. Behavioral Control
 2. Financial Control
 3. Type of Relationship





Understanding the Three Categories

I. Behavioral Control
Facts that show whether the business has a right to direct and control how the worker does the tasks for which the worker is hired, such as...





- When and **Where** to work
- How to do the work
- Who does the work
- **Use** of “subcontractors”
- Training



If you tell them what to do, when to work and how to do it ... they are probably an employee!



II. Financial Control

Facts that show whether the business has a right to control the business aspects of the worker's job, such as ...



- Who **pays** for business expenses
- Who **made** the business investment – (i.e. facilities or equipment needed)
- Are services **available** to the general public
- How are **payments** made – hourly basis or project/fixed fee
- **Realization** of profit or loss



NOW OPEN

TO THE PUBLIC

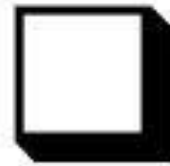


If the person performing the work does not experience the same business pressures you feel, they are probably not running their own business and are, in reality, an employee!



III. Type of Relationship

Facts that show
the parties' type
of relationship,
such as ...



W2



1099



- **Length** of relationship
- How is relationship ended
- **Who** may terminate relationship
- **Key aspect** of the business





Independent contractors are free to work wherever and for whomever ... if you would like to dictate those facets, they should probably be an employee.



But Wait...
**THERE'S
MORE!**



WHAT IS AB5
AND HOW WILL IT
AFFECT CALIFORNIA'S
GIG ECONOMY?



Under the **ABC test**, a hiring company must establish the following three factors in order to show that a particular worker (or group of workers) should be considered an independent contractor rather than an employee:

- A. ...that the worker is free from the **control & direction** of the hiring connection with the performance of the work, both under the contract for the performance of the work and in fact;
- B. ...that the worker performs work that is **outside the usual course** of the hiring entity's business; and
- C. ...that the worker is **customarily engaged** in an independently established trade, occupation or business

If the hiring company is **unable to prove** any one of these three parts of the test, the worker will be considered an included **employee** for purposes of the California wage order, not an independent contractor





Some Advice & Guidance



Which Form Do I Use?



EMPLOYEE

Form W-4	Employee's Withholding Certificate		OMB No. 1545-0074
Department of the Treasury Internal Revenue Service	<p>► Complete Form W-4 so that your employer can withhold the correct federal income tax from your pay.</p> <p>► Give Form W-4 to your employer.</p> <p>► Your withholding is subject to review by the IRS.</p>		2020
Step 1: Enter Personal Information	(a) First name and middle initial	Last name	(b) Social security number
	Address		► Does your name match the name on your social security card? If not, to ensure you get credit for your earnings, contact SSA at 800-772-1213 or go to www.ssa.gov .
	City or town, state, and ZIP code		
	(c) <input type="checkbox"/> Single or Married filing separately <input type="checkbox"/> Married filing jointly (or Qualifying widow(er)) <input type="checkbox"/> Head of household (Check only if you're unmarried and pay more than half the costs of keeping up a home for yourself and a qualifying individual.)		

Complete Steps 2-4 ONLY if they apply to you; otherwise, skip to Step 5. See page 2 for more information on each step, who can claim exemption from withholding, when to use the online estimator, and privacy.

Step 2: Multiple Jobs or Spouse Works	<p>Complete this step if you (1) hold more than one job at a time, or (2) are married filing jointly and your spouse also works. The correct amount of withholding depends on income earned from all of these jobs.</p> <p>Do only one of the following.</p> <p>(a) Use the estimator at www.irs.gov/W4App for most accurate withholding for this step (and Steps 3-4); or</p> <p>(b) Use the Multiple Jobs Worksheet on page 3 and enter the result in Step 4(c) below for roughly accurate withholding; or</p> <p>(c) If there are only two jobs total, you may check this box. Do the same on Form W-4 for the other job. This option is accurate for jobs with similar pay; otherwise, more tax than necessary may be withheld <input type="checkbox"/></p>
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TIP: To be accurate, submit a 2020 Form W-4 for all other jobs. If you (or your spouse) have self-employment income, including as an independent contractor, use the estimator.

Complete Steps 3-4(b) on Form W-4 for only ONE of these jobs. Leave those steps blank for the other jobs. (Your withholding will be most accurate if you complete Steps 3-4(b) on the Form W-4 for the highest paying job.)

Step 3: Claim Dependents	<p>If your income will be \$200,000 or less (\$400,000 or less if married filing jointly):</p> <p>Multiply the number of qualifying children under age 17 by \$2,000 ► \$</p> <p>Multiply the number of other dependents by \$500 ► \$</p> <p>Add the amounts above and enter the total here 3 \$</p>
Step 4 (optional): Other	<p>(a) Other income (not from jobs). If you want tax withheld for other income you expect this year that won't have withholding, enter the amount of other income here. This may include interest, dividends, and retirement income 4(a) \$</p>

INDEPENDENT CONTRACTOR

Form W-9	Request for Taxpayer Identification Number and Certification		Give Form to the requester. Do not send to the IRS.
Department of the Treasury Internal Revenue Service	<p>(Rev. October 2018)</p> <p>► Go to www.irs.gov/FormW9 for instructions and the latest information.</p>		
Print or type. See Specific instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.		
	2 Business name/disregarded entity name, if different from above		
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.		4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
	<input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions) ►		Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ (Applies to accounts maintained outside the U.S.)
	5 Address (number, street, and apt. or suite no.) See instructions.		Requester's name and address (optional)
	6 City, state, and ZIP code		
	7 List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)	
<p>Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i>, later.</p> <p>Note: If the account is in more than one name, see the instructions for line 1. Also see <i>What Name and Number To Give the Requester</i> for guidelines on whose number to enter.</p>	<p>Social security number</p> <p>____ - ____ - ____</p> <p>OR</p> <p>Employer identification number</p> <p>____ - ____ - ____</p>

Part II Certification	
Under penalties of perjury, I certify that:	
<p>1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and</p> <p>2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and</p> <p>3. I am a U.S. citizen or other U.S. person (defined below); and</p> <p>4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.</p>	
<p>Backup withholding instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments</p>	

Structure the Relationship

To best assure a favorable outcome in the event of tax scrutiny, employers should:

- Have “written” contracts or arrangements with their music teachers
- Have an attorney review all documents
- If need be, request assistance from the IRS in determining status by filing a Federal Form SS-8



Making Certain of Independence

- The independent contractor provides:
 - an ***invoice*** for payment
 - services to ***other business*** besides yours
 - a ***certificate*** of liability insurance
 - a signed per ***project Agreement*** for service
- Your business **does not** train, direct the work responsibilities, or define the work schedules

✓ BEST
PRACTICE

