



EMPLOYEES OR CONTRACTORS?

LESSON TOPICS

1. Employee vs. Independent Contractor

When bringing someone in to work in your business, it is best practice to make them an employee. If you have an auditor coming into your business they will not question why you made someone an employee, but they could question why you made someone an independent contractor.

What does it mean to be an independent contractor? An independent contractor is someone that you have called into your business that will bring their expertise, knowledge, and tools to complete a task. As the business owner, you may give some information about the task but then you let them complete the task without micromanagement from you. The task at hand is then completed an invoice is sent, you pay the independent contractor, and they go on to other businesses and workplaces. They do not rely on your business to continue providing for their income or functionality.

The difficulty with determining if someone should be an independent contractor is that there are no clear guidelines set out by the Department of Labor or IRS. They do have general information provided but no check sheet. If you choose incorrectly, it can cause a fair amount in back taxes and back payments to a staff member. It is important to work with a SBDC Specialist in order to determine if someone is an employee or independent contractor, if you have any questions.

2. Defining Exempt and Non-Exempt

The idea of exempt and non-exempt is related to overtime.

Exempt: An employee is exempt from receiving overtime.

Non-Exempt: An employee is not exempt from receiving overtime, meaning they will receive overtime if they work over 40 hours in a work week.

3. Deciding Exempt vs. Non-Exempt

The best practice for business owners is to make an employee non-exempt, which would not be questioned like an exempt employee status may get from auditors. The Department of Labor does provide some guidelines on what positions can be considered exempt. These guidelines include administrative classifications, IT classifications, executive classifications, and white-collar classifications. Blue-collar positions will always be considered non-exempt.

To be exempt or non-exempt is related to the position not individually. There can not be two different people in the same position but have one be exempt and the other non-exempt. There are also salary thresholds related to the position of an individual. To be considered exempt the position also has to meet job requirements and a salary threshold.

It is important to understand the relationship between salary vs. hourly and exempt vs. non-exempt. Salary and hourly are simply how you pay an employee and is not a determining factor on if the employee is exempt from overtime.