

Q.As an employer, what obligations do I have to purchase Workers' Compensation Insurance or comply with other labor laws for persons classified as independent contractors?

A. Employers often improperly classify their employees as independent contractors to avoid paying payroll taxes, minimum wage or overtime, or complying with other wage and hour requirements such as providing meal periods and rest breaks, etc. Additionally, employers do not have to cover independent contractors under Workers' Compensation Insurance. However, because potential liabilities and penalties are significant it is important that each working relationship be thoroughly researched and analyzed before classifying an individual as an independent contractor and not an employee. You should understand that the DLSE presumes that the worker is an employee ([Labor Code Section 3357](#)).

Q.The person I work for tells me that I am an independent contractor and not an employee. He does not make any payroll deductions or withholdings for taxes, social security, etc., when he pays me, and at the end of the year he provides me with an IRS form 1099 rather than a W-2. By paying me in this manner does it mean I am automatically an independent contractor?

A. No. The fact that a person who provides services is paid as an independent contractor, that is, without payroll deductions and with income reported by an IRS form 1099 rather than a W-2, is of no significance whatsoever in determining employment status. Your employer cannot change your status from that of an employee to one of an independent contractor by illegally requiring you to assume a burden that the law imposes directly on the employer, that being, withholding payroll taxes and reporting such withholdings to the taxing authorities.

Q. When I started my current job my employer had me sign an agreement stating that I am an independent contractor and not an employee. Does this mean I am an independent contractor?

A.

No. The existence of a written agreement purporting to establish an independent contractor relationship is not determinative. The Labor Commissioner and courts will look behind any such agreement in order to examine the facts that characterize the parties' actual relationship and make their determination as to employment status based upon their analysis of such facts and application of the appropriate law.

https://www.dir.ca.gov/dlse/faq_independentcontractor.htm