



How to Correctly Classify Your Workers



BENEFITS &
PERKS



HIRING &
ONBOARDING



MANAGING
YOUR TEAM



KEEPING
COMPLIANT



RUNNING A
BUSINESS 101

Table of Contents

3	INTRODUCTION	Classifying Your Workers
5	PART ONE	Full-Time Employees
7	PART TWO	Part-Time Employees
8	PART THREE	Temporary or Seasonal Employees
10	PART FOUR	Independent Contractors
12	PART FIVE	Statutory Employees and Non-Employees
13	PART SIX	Interns
15	PART SEVEN	Volunteers
16	CONCLUSION	Justworks Can Help



INTRODUCTION

Classifying Your Workers

Is the person who just started working for you an independent contractor? Or are they an employee? Full-time? Part-time?

With all the different types of workers out there, figuring out how to correctly classify your workers can get confusing. However, doing so is crucial to comply with applicable laws and avoid the costly consequences of misclassification.

This guide identifies different types of workers. It also provides general information regarding each type of worker, to help you properly classify your employees.

Simply put, an employee is someone who works for your business. However, the true definition of employee can go deeper than that. You may have several types of workers on your team.

Types of Workers

- ✓ Full-time employees
- ✓ Part-time employees
- ✓ Temporary and seasonal employees
- ✓ Independent contractors
- ✓ Statutory employees and non-statutory employees
- ✓ Volunteers (non-profits and certain government agencies only)



As your business grows, you may choose to employ several types of employees and maybe even other types of workers.

Knowing how to classify your employees is important, because failing to properly classify your employees correctly can have costly consequences.

For example, if you classify a worker who is a full-time or part-time employee as an independent contractor, and you do not report wages or remit taxes, you may find yourself saddled with hefty fines. Employee classifications also help you determine who should receive which benefits.

According to the IRS, a common law employee is:

“Anyone who performs services for you is your employee if you can control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed.”

Common-law employees can be full-time, part-time, or temporary/seasonal employees.



“Anyone who performs services for you is your employee if you can control what will be done and how it will be done.”



PART ONE

Full-Time Employees

Full-time employment is usually considered between 30-40 hours a week, while part-time employment is usually less than 30 hours a week. However, the answer is not quite as simple as it sounds.

That's because the Fair Labor Standards Act (FLSA) has no definition for part-time or full-time employment, and employers generally may determine their own definitions. However, according to the IRS, for purposes of the Affordable Care Act (ACA), the following definition is used for full-time employee:

"A full-time employee for any calendar month is an employee who has on average at least 30 hours of service per week during the calendar month, or at least 130 hours of service during the calendar month."

As an employer, you may inadvertently misclassify a worker as part-time, when in fact, the employee is classified as full-time under the ACA. This could cause benefits-related penalties for you.



A full-time employee for any calendar month is an employee who has on average at least 30 hours of service per week during the calendar month, or at least 130 hours of service during the calendar month.



Misclassification Risks

For example, if you have at least 50 full-time employees, including full-time equivalent (FTE) employees, on average during the prior year, you're an Applicable Large Employer (ALE) for the current calendar year, and therefore subject to employer shared responsibility provisions and the employer information reporting provisions.

Under the ACA's employer shared responsibility mandate, ALEs must either offer minimum essential coverage that is "affordable" and that provides "minimum value" to their full-time employees (and their dependents). If you're an ALE and fail to offer such coverage, you potentially must make an employer shared responsibility payment to the IRS. Also, you may face penalties for failure to meet the employer information reporting requirements.

Employers generally offer full-time employees benefits. Other than the ACA employer shared responsibility mandate mentioned above, the shape of the benefits package you offer is largely up to you.

How do I know if I need to pay my employees overtime pay?

Generally, the Fair Labor Standards Act (FLSA) and applicable state law requires you as an employer to pay employees at least minimum wage for all hours worked. It also requires you to pay overtime pay at a rate of 1.5 times the employee's regular rate all hours of 40 worked in a workweek. Some states also have daily overtime requirements.

However, some employees are exempt from the FLSA's and state minimum wage and overtime requirements — they're called exempt employees. Those who are subject to those requirements are called non-exempt employees. As an employer, you're required to classify employees as either exempt or non-exempt at the time of hire. That classification should be based on certain criteria determined by the Department of Labor and applicable state agencies.

Some states and local jurisdictions have their own wage and hour laws, which may provide greater protection for employees than what's provided under the FLSA. Generally, where federal, state, and local laws conflict, the law that is most beneficial to the employee prevails.



PART TWO

Part-Time Employees

Part-time employees are common-law employees who work for you on an ongoing basis. However, the average number of hours they work per week falls short of what your company defines as full-time.

People who work for you on a full-time basis will likely receive a broad range of benefits. Many businesses also choose to offer at least some benefits to part-time employees, though on a more limited basis. For example, you may offer paid time off to full-time workers but not to those who work part-time. Insurance benefits for part-time employees may also be more limited.

What about taxes?

You have to pay the same types of taxes for part-time employees as you do for full-time employees.



Many businesses choose to offer at least some benefits to part-time employees, though on a more limited basis.



PART THREE

Temporary or Seasonal Employees

You hire temporary or seasonal employees for a specific amount of time and to fulfill a certain purpose, such as working on a specific project.

Similarly, if you own retail stores, you might hire seasonal employees help during the holiday season. If you work in hospitality, you may want to add temporary staff to your team during peak travel seasons.

You may find temporary or seasonal employees through a staffing agency or a talent search that you conduct on your own. You'll need to withhold taxes from temporary employees if you hire them yourself and pay their wages.

However, if a staffing agency employs your temporary or seasonal workers, the agency, as the employer, will take care of those details for you. The agency may submit an invoice to you that includes a fee for the worker's services as well as a finder's fee for the agency. A finder's fee is usually only charged when the client company hires a temp.



You'll need to withhold taxes from temporary employees if you hire them yourself and pay their wages.



Temporary and seasonal employees are entitled to Social Security and unemployment benefits, and sometimes under state and local laws they may be eligible for paid sick leave, but usually they do not receive other benefits.

When you welcome temporary and seasonal employees into the fold, you may use the time they work for you as a screening period. If you chose to turn temporary employees into permanent employees, be sure to properly onboard them and offer all the appropriate benefits, including reclassifying them in your records.



Temporary and seasonal employees are entitled to Social Security and unemployment benefits, and sometimes under state and local laws they may be eligible for paid sick leave.



PART FOUR

Independent Contractors

Having independent contractors — sometimes called freelancers — on your team is simpler than having common-law employees.

Generally, as an employer you must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to an employee. You generally don't have to withhold or pay any taxes on payments to independent contractors. Also, contractors are not typically entitled to receive health insurance, retirement, and other benefits an employer provides to its employees.

However, don't give in to the temptation to classify your common-law employees as independent contractors in order to spare yourself financially. If you misclassify an employee as an independent contractor, your company could be liable for employment taxes, back pay, employee benefits, disability payments, workers' compensation, tax and insurance obligations, fines and other penalties from both the federal government and one or more state agencies.



Contractors are not typically entitled to receive health insurance, retirement, and other benefits an employer provides to its employees.



How do you determine the difference between an independent contractor and an employee?

There is no single test to evaluate independent contractor status for all purposes and compliance is often complicated by the fact that different tests may apply.

For example, the test to determine independent contractor status under federal tax law is not the same as the test applied under the FLSA. Courts apply different tests depending on the employment law at issue. It's possible to be an independent contractor under one test and an employee under another.

The key element, however, is the amount of control you have over the worker. Generally speaking, a company that contracts with an independent contractor tells the contractor what the scope of work is, but doesn't have any control over how the contractor achieves the desired result.

For example, if a worker uses her own materials and has unreimbursed expenses, this may tend to show that the worker is an independent contractor rather than an employee. Whether someone is an independent contractor or an employee is a fact intensive inquiry.



A company that contracts with an independent contractor tells the contractor what the scope of work is, but doesn't have any control over how the contractor achieves the desired result.



PART FIVE

Statutory Employees and Non-Employees

Statutory employees are independent contractors under IRS common law.

They are treated as employees by statute for certain employment tax purposes, only if they meet the conditions and fall within any of the few categories **listed on the IRS website**. For example, that includes certain types of drivers, full-time life insurance sales agents, and traveling salespeople.



Independent contractors are treated as statutory employees only if they fall into specific categories and meet the conditions outlined on the IRS website.



PART SIX

Interns

Hiring interns may be an affordable way to add talent to your team.

In most cases, you should treat your interns as temporary employees.

Many companies have historically hired interns on an unpaid basis in order to save costs on jobs that would otherwise go to entry-level employees. Though very common, the practice of employing unpaid interns may actually violate state and federal labor laws.

In order to use unpaid interns, the Department of Labor Uses the primary beneficiary test, as outlined here:

- 1 The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
- 2 The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
- 3 The extent to which the internship is tied to the intern's formal education program by integrated coursework or the receipt of academic credit.
- 4 The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.
- 5 The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.
- 6 The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
- 7 The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

The DOL will review each case individually with the primary beneficiary test, and it's a flexible test, with no single factor being determinative.



Not all federal courts rely on the DOL's primary beneficiary test, however. And different requirements may also exist under state and local wage and hour laws.

Also, keep in mind that the DOL's test only applies to for-profit businesses. Unpaid internships in the public sector and for non-profit charitable organizations, where the intern volunteers without expectation of compensation, are generally permissible.

When in doubt about internship regulations, it's probably best to classify interns as employees and pay them as required under applicable federal, state, and local law.



When in doubt about internship regulations, it's probably best to classify interns as employees and pay them as required under applicable federal, state, and local law.



PART SEVEN

Volunteers

Your employees might be willing to stay after hours without pay to get that big project finished on time, but you shouldn't allow them to do so if you operate a for-profit business.

Under the FLSA, only non-profit and public sector organizations may accept volunteer help. Even if your business is non-profit or in the public sector, you can't let your employees perform their normal jobs without compensation.

Correct Classification Counts

Correctly classifying your workers can help your business run smoother, and can save you from serious financial consequences. Be particularly aware of the difference between employees and independent contractors.

Also, make sure you have the proper forms on file when a temporary or seasonal employee becomes permanent or when a part-time employee takes on full-time responsibilities.



Under the FLSA, only non-profit and public sector organizations may accept volunteer help.



CONCLUSION

Justworks Can Help

As you can tell, sometimes classifying workers can be confusing, especially when trying to comply with all applicable federal, state, and local requirements. Justworks provides its customers with resources and best practices regarding classifying workers. And when in doubt, it's always a good idea to consult with employment counsel.

Justworks can help provide access to a robust benefits package that will help you retain your best talent. We also have HR consultants that can help guide you through the process of figuring out if your workers are employees or independent contractors, for example.

This material has been prepared for informational purposes only, and is not intended to provide, and should not be relied on for, legal or tax advice. If you have any legal or tax questions regarding this content or related issues, then you should consult with your professional legal or tax advisor.