

# How South Carolina Distinguishes Between Independent Contractors and Employees

## Related Attorneys

Daniel "Frank" Blanchard, III

James Atkinson "Chip"  
Bruorton IV

Mary Harriet Moore

Elizabeth F. Nicholson

May 13, 2021

Independent contractors are playing an increasingly common role in our economy, with the advent of the gig economy and more freelance jobs than ever before. When done properly, classifying a worker as an independent contractor can save a company significant money on taxes, insurance, and overhead. However, if a worker is incorrectly classified, it could result in legal fines and liability for the employer. The employment law attorneys of Rosen Hagood can make sure you avoid such troubles.

For most businesses, the question of whether a worker is an employee or an independent contractor involves several factors. A court considering the issue would want to know to what degree the employer has the right to direct and control the work.

In South Carolina, there's no single definition of "independent contractor" that provides a direct answer. However, a generally accepted definition of an independent contractor is: a worker who contracts to do work according to his or her own methods, without the control of the employer except as to the results of the work.

More specifically, the analysis boils down to an evaluation of the following factors:

- **Compensation:** How is the worker paid? Is the worker paid hourly, paid an annual salary, or paid upon completion of the work? Payment on the basis of time suggests the worker is an employee. Payment on the basis of performing a task suggests the worker is an independent contractor.
- **Equipment:** What equipment does the worker use, and who owns it? If the employer provides the equipment, there's an implication that the worker is an employee. Independent contractors generally use their own equipment to complete tasks.
- **Control:** As a general rule, the more control over the details of the work (e.g. when, where and how the worker completes it) the payer has, the more likely a court is to find that an employment relationship exists.
- **Termination:** Does the employer have the right to fire the worker? This questions strongly relates to the issue of control, with the ability to fire someone suggesting that the worker is an employee.

Correct classification matters because there are a number of requirements employers have to follow with respect to their employees. For example:

- If the business regularly employs four or more employees either on a full-time or part-time basis, the employer usually has to carry workers' compensation insurance.
- An employer has certain tax obligations with respect to his or her employees, including paying taxes

on income.

- Wages and overtime have to be paid in accordance with South Carolina laws and regulations.
- Employees may have the right to claim unemployment depending on how their employment was terminated.
- Employees are covered by various labor and employment laws, including those concerning discrimination, harassment, and retaliation.

Conversely, treating a worker as an independent contractor, if it's appropriate to do so, can save a business considerable expense. Although these savings can be enticing, getting the classification wrong could mean fines, back pay, litigation, and running into trouble with the IRS, SC Department of Revenue, and the state Workers' Compensation Commission.

When it comes to determining whether a work is an independent contractor or an employee, there is simply too much at stake to incorrectly classify your workers. Our goal at Rosen Hagood is to enable you to succeed by making sure the legal aspects of your business are taken care of. If you have questions about employment law, call today to schedule your consultation.