



CLASSIFYING INDEPENDENT CONTRACTORS VS. EMPLOYEES FOR WORKERS' COMPENSATION

One of the greatest questions in workers' compensation is how to determine whether a worker should be classified as an independent contractor or an employee. Even the court system continues to struggle with this challenge.

Classifying workers should be an informed business decision. As an agent, you can help guide your clients by understanding the implications of their choices.

Read on to review classification basics and FWCI's guidelines for labor and workers' compensation.

Employee Classification 101

What's an employee?

A person employed for wages or salary.

What's an independent contractor?

A person, business, or corporation that provides goods or services under a written contract or a verbal agreement.

When should a worker be classified as an independent contractor?

There is no single rule to determine whether a worker is an independent contractor, but you can start by asking three questions:

1. Is the person free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact?
2. Does the person perform work that is outside the usual course of the hiring entity's business?
3. Is the person customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed?

When an individual affirms the questions above, it is likely they should be classified as an independent contractor.

Labor Types Defined

Labor types are defined and reviewed as follows:

W-2 Employee

A W-2 employee is a full or part-time individual performing service in the course of a trade, business, profession, or occupation hired and paid directly by an insured. Mandated payroll taxes for unemployment, income tax, and FICA (social security and Medicare) are deducted from their pay. These employees may or may not receive additional benefits from their employer.

1099 Employee (Statutory Employee Labor)

A 1099 employee is a full or part-time individual performing service in the course of a trade, business, profession, or occupation hired and paid directly by an insured. The individual does not work for others and is paid via 1099. The insured generally does not provide benefits.

FWCI accepts 100% statutory employee labor.

Included Owner / Officers

In most states, workers' compensation is required for employees, while executive officers and business owners are usually not required to be included in the coverage. Election to be excluded or included should be determined prior to the beginning of the term. If included, business officers and owners are subject to special minimums and maximums that differ by state. An exclusion form is effective for the term in which it is signed and is not retroactive.

Subcontractor Types

Insured Subcontractors

Insured subcontractors are companies hired by the insured to perform part of a job or a complete job, not individuals paid via 1099. These companies should have their own workers' compensation coverage or a valid exemption from workers' compensation.

Independent Contractors

An independent contractor is a type of subcontractor that can be a person or business hired by the insured to provide goods or services under terms specified in a contract. Unlike a 1099 employee (statutory employee labor), an independent contractor does not regularly work for one company and may have a limited amount of hired workers depending on the state in which they are domiciled. They are not generally required to carry workers' compensation coverage but should carry an exemption certificate depending on the state in which they are domiciled.

FWCI accepts insured subcontractors and/or independent contractors up to 30% of the total labor cost, which includes W-2 and 1099 employees, and included owners.

Uninsured Subcontractors

FWCI DOES NOT accept uninsured subcontractor exposure.

The insured is responsible for making sure all subcontractors and/or independent contractors either have their own workers' compensation coverage or have a valid exemption from workers' compensation. If a subcontractor works on the insured's job site without proper coverage or a valid exemption, the insured will be charged for the additional exposure on their audit. In addition, coverage may be canceled or denied renewal for the use of uninsured subcontractors or subcontractor exposure exceeding FWCI guidelines.

Cash, Casual, Leased Labor

Leased Labor

Leased labor is a full or part-time individual performing service in the course of a trade, business, profession, or occupation to perform work for an insured. These individuals are hired through a leasing company. The insured generally does not provide benefits and pays a fee to the leasing company. Workers' compensation exposure is generally covered by the leasing company's certificate.

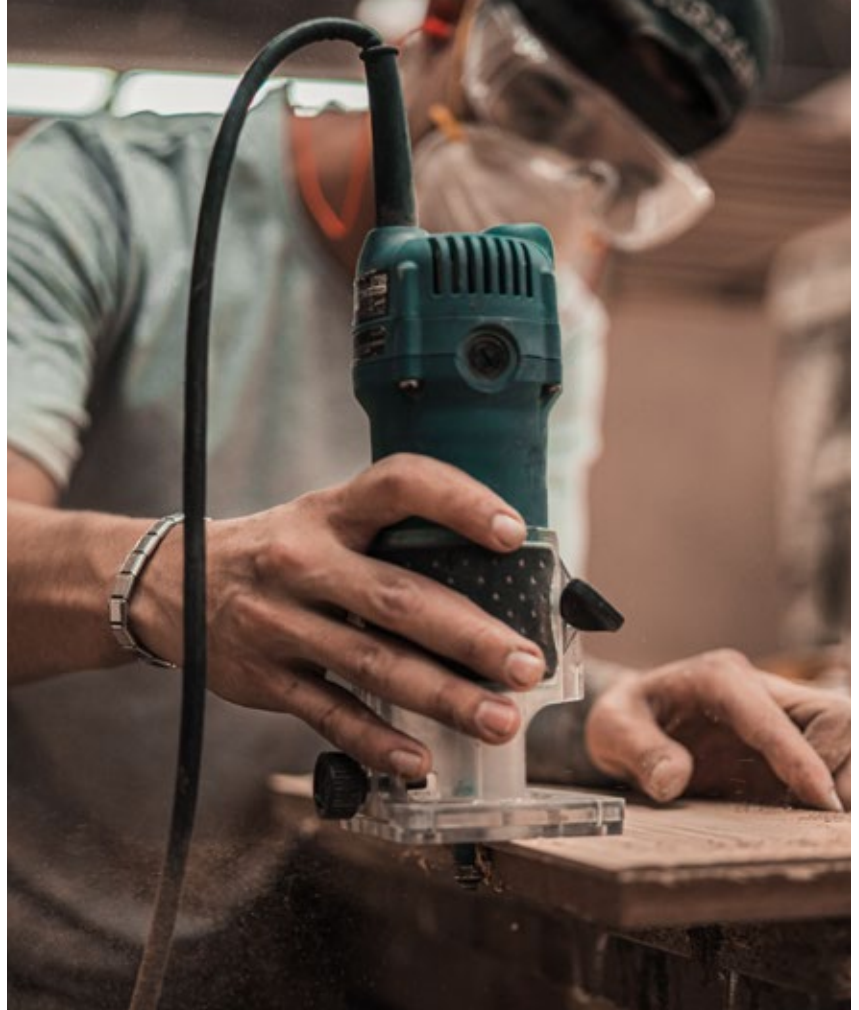
Casual Labor

Casual labor is informal employment, not in the usual course of trade, business, profession, or occupation of the employer. It is characterized as irregular, unpredictable, sporadic, and brief in nature.

Cash Workers

Cash workers are not hired formally by the company that pays them, so their compensation consists of cash money as opposed to payroll checks.

FWCI prohibits cash workers, casual labor, or leased labor. The insured may be charged for the additional exposure on their audit



Summary

Please keep the following FWCI labor guidelines in mind:

FWCI accepts:

- 100% 1099 employees (statutory employee labor)
- Up to 30% of total labor costs coming from subcontractor/independent contractor payroll

FWCI does not accept:

- Uninsured subcontractor exposure