



Worker Classification

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Under Wisconsin law, the classification of a person as an employee or an independent contractor is important for purposes of determining whether the person is covered by certain employment laws. The specific test for whether a person is an employee or an independent contractor varies depending on the program for which the determination is being made.¹ In each test, although the criteria vary, the overall analysis is similar, generally assessing the degree of control over the work, the financial connections, and the relationship between the person and the employer. A determination is made on a case-by-case basis, and could have a different outcome depending on which program is considered and the individual person’s circumstances.² Each test starts with a presumption that a person is an employee, unless the employer shows that the identified criteria for classification as an independent contractor are met.

This issue brief summarizes the tests to determine whether a person is an independent contractor, rather than an employee, for purposes of unemployment insurance and worker’s compensation benefits.³

UNEMPLOYMENT INSURANCE

For purposes of unemployment insurance coverage, a person is an independent contractor if the employer demonstrates that the person satisfies a test for the particular type of employer.⁴

Test for Private Employers

A person performing services for a private employer, in a capacity other than as a logger or trucker, is an independent contractor if the person meets the criteria in a two-part test, by contract and in fact.

Part One: Control or Direction	Part Two: Additional Conditions
<p>To satisfy part one of the test, the person’s services must be performed free from control or direction by the employer. The non-exclusive factors considered in making this determination are whether the person:</p> <ul style="list-style-type: none"> ● Is required to comply with instructions concerning how to perform the services. ● Receives training from the employer with respect to the services performed. ● Is required to personally perform the services. ● Is required to perform services at times or in a particular order or sequence established by the employer. ● Is required to make oral or written reports to the employer on a regular basis. 	<p>To satisfy part two of the test, the person must meet six or more of the following nine conditions:</p> <ul style="list-style-type: none"> ● Advertises or otherwise affirmatively holds themselves out as being in business. ● Maintains their own office or performs most of the services in a facility or location chosen by the person and uses their own equipment or materials in performing the services. ● Operates under multiple contracts with one or more employers to perform specific services. ● Incurs the main expenses related to the services that the person performs under contract. ● Is obligated to redo unsatisfactory work for no additional compensation or is subject to a monetary penalty for unsatisfactory work. ● Performs services that do not directly relate to the employer retaining the services. ● May realize a profit or suffer a loss under contracts to perform such services. ● Has recurring business liabilities or obligations. ● Is not economically dependent upon a particular employer with respect to the services being performed.

Test for Governmental Units, Nonprofit Organizations, Loggers, and Truckers

A person performing services for a governmental unit or nonprofit organization, or for a private employer in a capacity as a logger or trucker, is an independent contractor for purposes of the unemployment insurance law if both of the following criteria are satisfied:

- The person has been and will continue to be free from the employer's control or direction over the performance of the services both under the contract and in fact.
- The services have been performed in an independently established trade, business, or profession in which the person is customarily engaged.

WORKER'S COMPENSATION

For purposes of worker's compensation benefits, a nine-part test is used to determine whether a person is an independent contractor. A person must meet all of the following conditions to be considered an independent contractor:⁵

- Maintains a separate business with their own office, equipment, materials, and other facilities.
- Holds or has applied for a federal employer identification number with the Internal Revenue Service (IRS) or has filed business or self-employment income tax returns with the IRS based on that work or service in the previous year.
- Operates under contracts to perform specific services or work for specific amounts of money and under which the person controls the means of performing the services or work.
- Incurs the main expenses related to the service or work that the person performs under contract.
- Is responsible for the satisfactory completion of work or services that the person contracts to perform and is liable for a failure to complete the work or service.
- Receives compensation for work or service performed under a contract on a commission or per job or competitive bid basis and not on any other basis.
- May realize a profit or suffer a loss under contracts to perform work or service.
- Has continuing or recurring business liabilities or obligations.
- Success or failure of the person's business depends on the relationship of business receipts to expenditures.

¹ In addition to the programs described in this issue brief, worker classification tests are also considered for purposes of employment discrimination laws, federal and state minimum wage and overtime laws, the federal and state Family and Medical Leave Acts (FMLA), Social Security and Medicare tax withholdings, and federal and state income tax withholdings.

² The Department of Workforce Development has a [webpage](#) that assists employers in determining whether a person is an employee or independent contractor for purposes of state employment laws.

³ Unemployment insurance is sometimes referred to as "UI" and worker's compensation is sometimes referred to as "WC."

⁴ s. [108.02\(12\)\(bm\)](#) and [\(c\)](#), Stats.

⁵ s. [102.07\(8\)\(b\)](#), Stats.