

- Employee or Contractor
How to decipher the difference



Hello!

I'm Elizabeth (Liz) Thompson

she/her

I'm here because I have an unpopular opinion...

I like HR



AGENDA AND GOALS

- AGENDA AND GOALS

- Define Key Worker Categories

How to Classify Contractors and Employees

Setting Organizational Policies and Practices

Risks of Worker Misclassification

Share Resources

“

Determination of the [employer-employee] relationship cannot be based on isolated factors or upon a single characteristic, but depends upon the circumstances of the whole activity.

-US Department of Labor

1

DEFINE

Key Worker Categories

DEFINITIONS

Independent Contractor

Someone who is hired for a specific set of tasks over a time frame. They are self-employed and operate their business/service independently from the organization that hired them.

Employee (FT/PT)

Someone who works for and is managed by board or staff of an organization and has an ongoing and essential role in the operations of that organization.

Temporary Employee

Someone who works for and is managed by board or staff of an organization over a time frame determined by the organization.

● DEFINITIONS: EXAMPLES

○ **Independent Contractor**

Artist Commission
Exhibition Installation
Maintenance Repair
Workshop Facilitator
Bookkeeper
Teaching Artist
Event Staff

Employee (FT/PT)

Operations Assistant
Events Coordinator
Executive Director
Programs Manager
Bookkeeper
Teaching Artist

Temporary Employee

Intern
Bookkeeper
Teaching Artist
Event Staff

2

Classify

Independent Contractors and Employees

CLASSIFY: INTERNAL REVENUE SERVICE (IRS) CATEGORIES TYPE OF RELATIONSHIP

Type Relationship

Refers to facts that show how the worker and organization perceive their relationship to each other.



CLASSIFY: INTERNAL REVENUE SERVICE (IRS) CATEGORIES TYPE OF RELATIONSHIP

Factors

- **Written contracts**
- Employee benefits
- Permanency of the relationship
- Services provided as key activity of the organization

INDEPENDENT
CONTRACTOR

EMPLOYEE

**Contract
Outlining Scope
of Work**

**Offer
Letters,
Position
Descriptions**

CLASSIFY: INTERNAL REVENUE SERVICE (IRS) CATEGORIES
TYPE OF RELATIONSHIP



When do workers sign a contract drafted by the organization instead of just sending a proposal and invoice themselves?

CLASSIFY: INTERNAL REVENUE SERVICE (IRS) CATEGORIES
TYPE OF RELATIONSHIP



Organizational Contracts v. Proposals and Invoicing

- IRS has no preference.
- Set organizational protocols to determine a process.

What about memorandum of understandings (MOU)?

CLASSIFY: INTERNAL REVENUE SERVICE (IRS) CATEGORIES TYPE OF RELATIONSHIP

Factors

- Written contracts
- **Employee benefits**
- Permanency of the relationship
- Services provided as key activity of the organization

	INDEPENDENT CONTRACTOR	EMPLOYEE
Paid Time Off	Ineligible	Eligible
Insurance Coverage		
401(b) Retirement Contributions		

CLASSIFY: INTERNAL REVENUE SERVICE (IRS) CATEGORIES TYPE OF RELATIONSHIP

Factors

- Written contracts
- Employee benefits
- **Permanency of the relationship**
- Services provided as key activity of the organization

INDEPENDENT
CONTRACTOR

EMPLOYEE

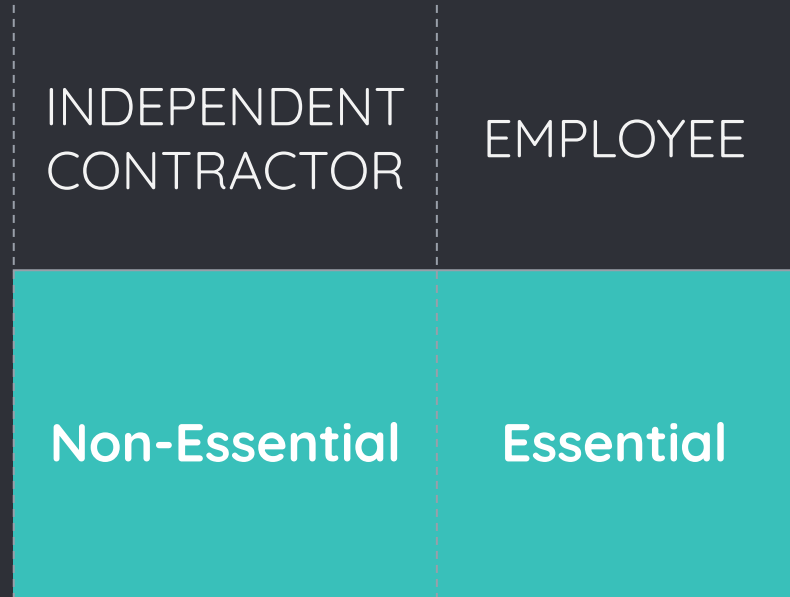
**Specified
Period**

**Indefinitely
(Unless
Temporary)**

CLASSIFY: INTERNAL REVENUE SERVICE (IRS) CATEGORIES
TYPE OF RELATIONSHIP

Factors

- Written contracts
- Employee benefits
- Permanency of the relationship
- **Services provided as key activity of the organization**



CLASSIFY: INTERNAL REVENUE SERVICE (IRS) CATEGORIES BEHAVIORAL CONTROL

Behavioral Control

Refers to whether there is a right to direct or control how the worker does the work.



CLASSIFY: INTERNAL REVENUE SERVICE (IRS) CATEGORIES BEHAVIORAL CONTROL

Factors

- **Type of instructions given**
- Degree of instruction
- Evaluation systems
- Training

	INDEPENDENT CONTRACTOR	EMPLOYEE
Determines when, where and how to do the work	Self	Organization
Provides tools and equipment to do the work		
Determines workers to assist with the work		

CLASSIFY: INTERNAL REVENUE SERVICE (IRS) CATEGORIES BEHAVIORAL CONTROL

Factors

- Type of instructions given
- **Degree of instruction**
- Evaluation systems
- Training

INDEPENDENT
CONTRACTOR

EMPLOYEE

Less/None

More

CLASSIFY: INTERNAL REVENUE SERVICE (IRS) CATEGORIES BEHAVIORAL CONTROL

Factors

- Type of instructions given
- Degree of instruction
- **Evaluation systems**
- Training

INDEPENDENT
CONTRACTOR

Measured by
Outcomes

EMPLOYEE

Measured
by Progress
and
Outcomes

CLASSIFY: INTERNAL REVENUE SERVICE (IRS) CATEGORIES BEHAVIORAL CONTROL

Factors

- Type of instructions given
- Degree of instruction
- Evaluation systems
- **Training**

INDEPENDENT
CONTRACTOR

EMPLOYEE

Self

Organization

CLASSIFY: INTERNAL REVENUE SERVICE (IRS) CATEGORIES
BEHAVIORAL CONTROL



Events Responsibilities

Provide lighting and sound tech support for the annual awards celebration.

Coordinate tech needs for program events.

Set up event space for the alumni potluck with seating for 50 people.

Assist with event setup in accordance with organizational and facility policies.

Identify areas of improvement for event registration processes.

Improve and manage event registration processes.

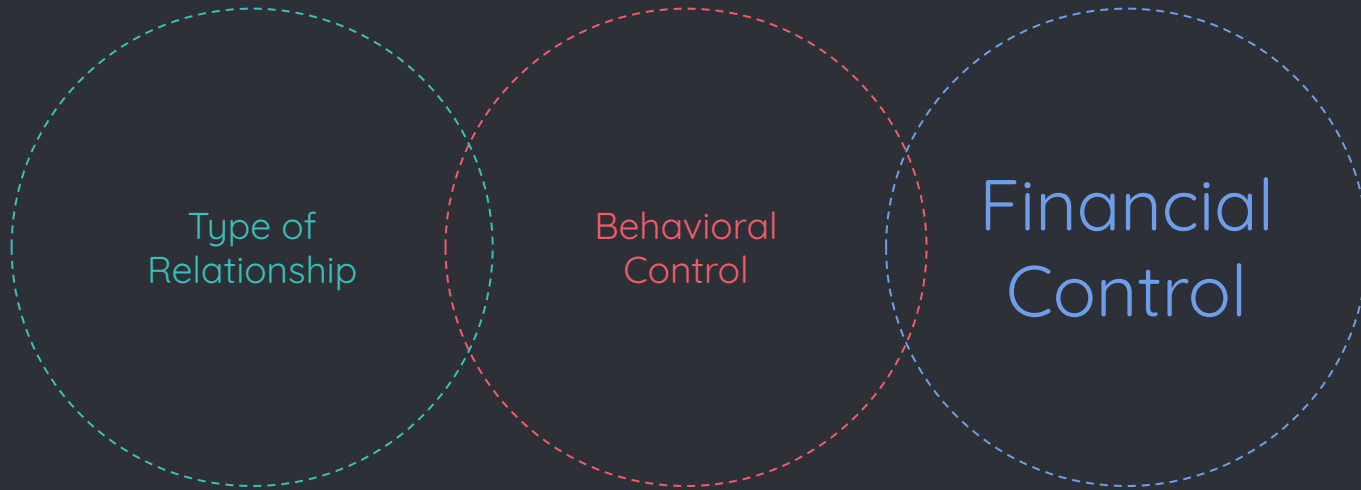
CLASSIFY: INTERNAL REVENUE SERVICE (IRS) CATEGORIES
BEHAVIORAL CONTROL



Teaching Artist Responsibilities

Independent Contractor	Employee
Develop and facilitate a 1.5 hour workshop on zine making.	Develop workshops for the season that incorporate the organization's exhibition themes.
Participate in a promotional video about the program.	Develop program promotional material.
Serve as a mentor for one youth group project.	Lead youth group project and coordinate mentor component.

- CLASSIFY: INTERNAL REVENUE SERVICE (IRS) CATEGORIES



CLASSIFY: INTERNAL REVENUE SERVICE (IRS) CATEGORIES FINANCIAL CONTROL

Financial Control

Refers to whether or not the organization has the right to control the economic aspects of the worker's job.



CLASSIFY: INTERNAL REVENUE SERVICE (IRS) CATEGORIES FINANCIAL CONTROL

Factors

- **Significant investment**
- Unreimbursed expenses
- Opportunity for profit or loss
- Services available to the market
- Method of payment

INDEPENDENT
CONTRACTOR

EMPLOYEE

More

Less

CLASSIFY: INTERNAL REVENUE SERVICE (IRS) CATEGORIES FINANCIAL CONTROL

Factors

- Significant investment
- **Unreimbursed expenses**
- Opportunity for profit or loss
- Services available to the market
- Method of payment

INDEPENDENT
CONTRACTOR

EMPLOYEE

More/All

Less/None

CLASSIFY: INTERNAL REVENUE SERVICE (IRS) CATEGORIES FINANCIAL CONTROL

Factors

- Significant investment
- Unreimbursed expenses
- **Opportunity for profit or loss**
- Services available to the market
- Method of payment

INDEPENDENT
CONTRACTOR

EMPLOYEE

**High Loss
Probability**

**Low / No
Loss
Probability**

CLASSIFY: INTERNAL REVENUE SERVICE (IRS) CATEGORIES FINANCIAL CONTROL

Factors

- Significant investment
- Unreimbursed expenses
- Opportunity for profit or loss
- **Services available to the market**
- Method of payment

INDEPENDENT CONTRACTOR	EMPLOYEE
Yes	Limited

CLASSIFY: INTERNAL REVENUE SERVICE (IRS) CATEGORIES FINANCIAL CONTROL

Factors

- Significant investment
- Unreimbursed expenses
- Opportunity for profit or loss
- Services available to the market
- **Method of payment**

	INDEPENDENT CONTRACTOR	EMPLOYEE
	Flat Fee or Hourly	Regular Intervals
Taxes Withheld	No	Yes

3

Policies and Practices

Bringing on Independent Contractors and Employees

● POLICIES AND PRACTICES



Personnel Policy

- Categories of employees
- Outside employment and organizational representation
- Payday procedures
- Workday hours
- Workplace conditions
- Employee benefits descriptions
- Employee performance protocols

POLICIES AND PRACTICES FOR EMPLOYEES ONLY



staff@ email list



Organizational
chart



Bio and photo on
website



Access to payment
methods



Sign personnel
policy



Sign up for benefits
and payroll



Develop a
performance plan



Solidify work
schedule

POLICIES AND PRACTICES FOR EMPLOYEES AND CONTRACTORS - DEPENDING



Individual
organizational
email



Access to the
office / facility



Dedicated working
space



Provide equipment



Business cards



Access to internal
platforms, systems,
etc.



Sign relevant HR
documents



Participate in staff
meetings /
activities



4

Misclassification

For Independent Contractors and Employees



10-20%

Of employers misclassify at least one employee

30%

Estimated cost increase to classify workers as employees

More than 50%

Of the workforce is comprised of freelancers

- CONSEQUENCES: MISCLASSIFICATION

- May be held liable for employment taxes for the misclassified worker

The government has been known to target organizations for audits *that show substantial payments to independent contractors.*

- MISCLASSIFICATION



But what if someone asks to be classified as an independent contractor?

5

Summary

How to Decipher the Difference Between
Independent Contractors and Employees

“

Determination of the [employer-employee] relationship cannot be based on isolated factors or upon a single characteristic, but depends upon the circumstances of the whole activity.

-US Department of Labor

6

Resources

● RESOURCES

CultureWorks

○ [Internal Revenue Service \(IRS\)](#)

Form SS-8

PA Department of Labor

Philadelphia Foundation's [Key Skills Hub](#)

Philadelphia Volunteer Lawyers for the Arts (PVLA)

Philly Nonprofit HR Group (Philly NPHR)

Conduct regular meetups to discuss HR challenges and share resources

Must be with a nonprofit in Greater Philadelphia and in a role that manages HR

Connect with Liz if interested

[Society for Human Resource Management \(SHRM\)](#)

US Department of Labor

Thanks!

ANY QUESTIONS?

You can find me at

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