



Independent Contractor Or Employee? Which Is It?

Is the person working for you an employee? If they're an employee, then they're required to be covered for workers' compensation under your policy. In some instances, the factors surrounding whether there is truly an "employer/employee" relationship can be complicated. The legal test to determine if a worker is an employee or an independent contractor depends on many factors. CompSource auditors look at each policyholder's circumstances on a case-by-case basis to determine how the relationship is defined under Title 85, Oklahoma's workers' compensation statutes.

For an individual to qualify as an independent contractor, an employer/employee relationship **cannot** exist. The Affidavit of Exempt Status form and the Exempt Status Fact Sheet at www.compsourceok.com can assist policyholders in evaluating what is and is not an independent contractor relationship.

IMPORTANT - Please understand just because someone has completed the form and had it notarized does not, by itself, guarantee they qualify as an independent contractor for workers' compensation premium calculation. Final determination is made once the workers' compensation premium auditor reviews the policyholder's records and documentation.

Factors that may indicate employee status

There are factors that, if present, indicate the worker is more likely to be an employee rather than an independent contractor.

- They receive instructions on when, where and how to work. (The more instructions they receive, the more likely they're an employee.)
- They receive training from the employer.
- They are required to work specified hours.
- They work full time.
- They work at the employer's place of business (unless the work is scheduled to be done somewhere else - for example, building a house or painting an office).
- They are told in what order the work is to be done.
- They are paid by the hour instead of by the job or on commission.
- They are reimbursed for any business expenses.
- They can be fired.
- They don't have a contract with the employer.
- They can quit without being sued for breach of contract.

Again, the factors that determine the status of a worker are many. If a worker falls under the definition of an employee according to Oklahoma's workers' compensation statutes, that worker is treated as your own employee and you will be charged premium for individuals who meet that definition.

Just because a worker considers himself an independent contractor does not mean that worker will automatically be treated as an independent contractor under the workers' compensation rules. For example, there can be two drywall laborers working at a construction site for one builder and although these laborers may consider themselves "independent contractors," they may not be for workers' compensation premium calculation purposes. It is more likely they will be considered "employees" as defined in Title 85 since they are ***"associating themselves together . . . for the performance of a particular piece of work."***

Important questions a policyholder can ask are . . .

- Do those working for me have valid workers' compensation coverage?
- If not, can they opt out of coverage under the Family of Five exemption as defined in Title 85?
- Are those who are working for me and claiming independent contractor status truly working alone and exempt from workers' compensation coverage?

If you can't answer these questions or need more clarification, please call your CompSource underwriter. CompSource's goal is to ensure policyholders are accurately covered and that all their employees are protected if injured on the job. Another goal is to eliminate surprises at the year end audit. If the company's payroll has been accurately documented, these goals will be reached. CompSource auditors are trained to make an accurate determination based on the workers' compensation statutes.

For answers to questions or for more clarification on this topic, please contact the Underwriting department at (405) 232-7663, ext. 5102 or 800-347-3863, ext. 5102.

TITLE 85 EMPLOYEE DEFINED

Title 85 defines an employee as follows:

"Employee means any person engaged in the employment of a person, firm or limited liability company or corporation covered by the terms of the Workers' Compensation Act, and shall include workers associating themselves together under an agreement for the performance of a particular piece of work, in which event such persons so associating themselves together shall be deemed employees of the person having the work executed; . . ."

For more on Title 85 and the definition of employee, go to www.owcc.state.ok.us, then click on "Laws/Rules/Charts." From there click on "Title 85."