

# Independent Contractor or Covered Worker?

*Your rights to workers' compensation, minimum wage and overtime*



If you are paid as an “Independent Contractor” or 1099 worker, you may still be entitled to workers’ compensation, minimum wage and overtime in Washington State. Whether you are paid and reported on an IRS W-2 form (typically considered an “employee”) or IRS 1099 form (often called an “Independent Contractor”) there are other criteria that are considered under Washington State Law.

## Independent Contractors

A bona fide independent contractor is exempt from mandatory workers’ compensation coverage and Washington’s Minimum Wage Act (MWA) because that person is not “employed” by an employer. However, an employer cannot avoid conforming to Washington laws by merely referring to someone as an “independent contractor.” Whether a worker is an independent contractor must be carefully evaluated on a case-by-case basis. IRS reporting standards cannot be used to determine the workers’ rights to coverage under Washington State law.

## Workers’ Compensation

Washington law states that an independent contractor who provides essentially personal labor is covered by industrial insurance. There are few exceptions to this law, and they are specified on the reverse side. A worker must meet all of the criteria listed to be exempt from mandatory workers’ compensation coverage.

## Minimum Wage/Overtime

The Washington Minimum Wage Act (MWA), establishes a minimum wage for employees in Washington State. The MWA also requires employers to pay overtime wages of at least one and one-half an employee’s regular rate of pay for hours worked in excess of 40 in a 7-day work week.

## Piece-Rate Work

Unless specifically exempted from the MWA, piece-rate earners are entitled to the applicable minimum wage for each hour worked. For employees paid on commission or piecework basis, other than those employed in bona fide outside sales positions, the commission or piecework earnings earned in each workweek are credited toward the total wage for the pay period. The total wage for that period is determined by dividing the total earnings by the total hours worked; the result must be at least the applicable minimum wage for each hour worked.

## Questions regarding workers’ compensation coverage?

See the complete guide at [www.Lni.wa.gov/IndependentContractor](http://www.Lni.wa.gov/IndependentContractor).

Still need help? Contact Employer Services at 360-902-4817.

## Questions about your rights regarding wages, breaks and hours?

Contact Employment Standards at 1-866-219-7321.

# Determining if a worker is an Independent Contractor

## Workers' Compensation

**RCWs 51.08.180, 51.08.181 and 51.08.195**

If the individual provides the labor of others (brings their own workers) or provides heavy or costly specialized equipment, then they are providing more than just their own personal labor and are exempt from mandatory worker's compensation coverage as a bona fide independent contractor.

If the individual does not provide heavy equipment or their own workers, then they are only exempt from mandatory workers' compensation coverage if they pass all of the criteria below, showing that they are an established business, working without your direction or control.

1. Are they free from your supervision, direction or control?
2. Is the individual's business different and separate from your own?
  - a. Is the individual's service "outside the usual course of business," or in other words, does the contractor do something different from what you do?
  - b. Is the individual's service being performed "outside of all of the places of business," or in other words, does the contractor perform the service away from where you perform your services?
  - c. Is the individual contractually obligated to pay costs affiliated with the location from where the work is controlled (usually its headquarters)?
3. Does the individual have an established independent business that existed before you brought them on — OR — does the individual have a principal place of business that qualifies for an IRS business deduction?
  - a. Do you have evidence to demonstrate that the individual has an established business?
  - b. Does the individual have a principal place of business that qualifies for an IRS business deduction?
4. Is the individual responsible for filing a schedule of expenses with the IRS, such as would be part of a business tax return?
5. Does the individual have all required registrations and licenses for their business?
6. Does the individual maintain his/her own set of books and records that reflect all income and expenses of the business?
7. This question is for construction contractors only: Is the individual a properly registered contractor?

## Minimum Wage Act (MWA)

**RCW 49.46**

To determine whether an individual is an employee or a true independent contractor for purposes of the MWA, Employment Standards looks to the following factors on a case-by-case basis:

- i. The degree of control that the business has over the worker (the more control a business exerts over the worker, the more likely the worker is an employee);
- ii. The worker's opportunity for profit or loss is dependent on the worker's managerial skill (when the worker's opportunity for profit is not limited by a business, and the worker controls his or her own business expenses, the worker is more likely an independent contractor);
- iii. The worker's investment in equipment or material (where the worker's investment in equipment or materials is substantial, the worker is more likely an independent contractor);
- iv. The degree of skill required for the job (when a worker brings a special skill to a job and employs those skills in an independent manner, the worker is more likely an independent contractor);
- v. The degree of permanence of the working relationship (when a limited term working relationship exists, the worker is more likely an independent contractor);
- vi. The degree to which the services rendered by the worker are an integral part of the business (when the services performed by a worker are integral to the business, the worker is more likely an employee).

All six factors should be considered and weighed in combination with each other in each case.

For information regarding unemployment benefits, contact the Employment Security Department at 1-800-318-6022 or [www.esd.wa.gov](http://www.esd.wa.gov)

For IRS reporting rules: [www.irs.wa.gov](http://www.irs.wa.gov)