

Independent Contractors: Take a hard look

Three state and federal agencies want a piece of you. That is, the IRS, TWC and DOL see big dollar signs if you call the wrong worker an independent contractor. The IRS and TWC want payroll taxes, and the DOL wants overtime pay. What a trifecta?

Tack on plaintiff's overtime lawyers—now you've got a party. After all, the DOL is referring [overtime claimants](#) to the American Bar Association.

The Chronicle just reported on [independent contractors](#).

In the government's eyes, you're guilty until proven innocent. You have the burden of to prove that each worker is really an independent contractor. If you can't, the law presumes that the worker is your employee. Roughly 80% of independent contractors, says the IRS, are truly employees.

The feds have found strength in numbers. Launching a joint "Misclassification Initiative," the IRS and DOL are now sharing leads on your independent contractors.

And the DOL is working towards a "Right-to-Know" rule. The proposed rule would have companies tell independent contractors why they are classified as contractors, not as employees. That'll make any intelligent worker a little suspicious.

Even today, your independent contractors are a risk. They can easily figure out that claiming they're really employees might score them some quick cash. Here's how:

- Contractor gets laid off and goes to the TWC to file for unemployment benefits, then the TWC directs the contractor to visit the DOL for overtime pay; or
- Contractor gets irritated at you, Googles "independent contractor," and sees that the first hit is an ad for a plaintiff's overtime lawyer.



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[Independent Contractors](#)

[Federal Overtime Law](#)

[Fair Labor Standards Act \(FLSA\)](#)

[Overtime pay](#)

Do you use independent contractors? Take a good, hard look at them. Make sure they meet the different criteria established by the [IRS](#), [DOL](#) and [TWC](#) to be called independent contractors. By doing nothing, you make it easier for the government or a plaintiff's lawyer to collect extra tax and overtime penalties.

