

GILLINGHAM & ASSOCIATES



Your Hunting & Fishing Guides: Independent Contractors or Employees?

For lodges and preserves this is an important question. The implications affect your taxes, workers compensation insurance and general liability insurance. There are advantages and disadvantages to each way you compensate and classify your guides.

Who is an Employee? A general rule is that anyone who performs services for you is your employee *if you can control what will be done and how it will be done.*

Employees are truly under your control and direct supervision. You set the work hours, provide training, and have the right to hire and fire. The disadvantages are the expenses associated with employment taxes and workers compensation insurance. But be careful, trying to save a few dollars today by classifying your guides as independent contractors can cost you big down the road.

It is critical that you, the employer, correctly determine whether the individuals providing services are employees or independent contractors. Generally, you must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to an employee. You do not generally have to withhold or pay any taxes on payments to independent contractors. **Caution:** If you incorrectly classify an employee as an independent contractor, you can be held liable for employment taxes for that worker, plus a penalty.

Who is an Independent Contractor? A general rule is that you, the payer, have the *right to control or direct only the result of the work* done by an independent contractor, and *not the means and methods of accomplishing the result.*

Control is the most important test. The IRS and courts will examine the degree to which the facility controls the workers processes and work schedules.

A few things to think about:

1. Just because you label a worker an "IC" does NOT mean they are one.
2. The "IC" performs more than one important obligation.
3. If you have labeled someone an "IC", make sure the understanding is mutual.
4. Use a written contract.
5. A willful violation can be costly in terms of IRS penalties and liabilities.
6. All circumstances are unique; consult your CPA or your attorney.

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How does this affect your liabilities and general liability insurance? General liability insurance policies will not defend against or pay claims on behalf of your independent contractors. Meaning, that if you are classifying your guides as independent contractors and they are deemed to be the cause of an accident and litigation ensues, your policy will not defend the guide. They are left to defend themselves including legal costs for a defense, and if they are found liable, the damages could be life changing. Another point to mention is that if injured while working on your behalf, independent contractors can bring suit against you, unlike employees that must use workers compensation insurance to remedy their loss, therefore increasing your liabilities. To minimize your exposures you should be utilizing a written contract with your independent contractors that has an indemnity provision, and require them to maintain their own liability and workers compensation insurance. Depending on the situation, this is not always possible, in those cases; you need to have your liability policy endorsed to cover your hunting guides as additional insureds. This endorsement is available from Gillingham & Associates as are sample independent contractor agreements and liability waivers. Specialty insurance coverages, from firms like Gillingham & Associates, also understand your other unique exposures like hunting dogs in your care, custody and control, live birds held as stock, use of elevated hunting platforms and the use of ATVs. To be sure your insured against these exposures, contact a specialty insurance provider.

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