

# Independent Contractors in Maine



## Agencies who can answer questions about independent contractor issues.

### Maine Department of Labor

P.O. Box 259  
Augusta, ME 04332-0259  
Tel: (207) 623-7900, Fax: (207) 623-7938  
TTY: 1-800-794-1110  
e-mail: [webmaster.bls@maine.gov](mailto:webmaster.bls@maine.gov)  
web site: [www.maine.gov/labor](http://www.maine.gov/labor)

### Maine Workers' Compensation Board

Coverage Division  
27 State House Station  
Augusta, ME 04333-0027  
Tel: (207) 287-7071, Fax: (207) 287-5895  
TTY: (207) 287-6119  
e-mail: [Linda.Larrabee@maine.gov](mailto:Linda.Larrabee@maine.gov)  
web site: [www.maine.gov/wcb](http://www.maine.gov/wcb)

### Maine Revenue Service

Income/Estate Tax Division  
24 State House Station  
Augusta, ME 04333  
Tel: (207) 626-8475, Fax: (207) 624-9694  
TTY: 1-888-577-6690  
e-mail: [withholding.tax@maine.gov](mailto:withholding.tax@maine.gov)  
web site: [www.maine.gov/revenue](http://www.maine.gov/revenue)

### U.S. Department of Labor

Wage and Hour Division  
100 Middle Street Plaza  
Portland, ME 04101  
Tel: (207) 780-3344  
Fax: (207) 780-3783  
e-mail: [claus.james@dol.gov](mailto:claus.james@dol.gov)  
P.O. Box 1356  
Bangor, ME 04401  
Tel: (207) 945-0330  
Fax: (207) 945-0332  
e-mail: [collins.matthew@dol.gov](mailto:collins.matthew@dol.gov)  
web site: [www.dol.gov](http://www.dol.gov)

### U.S. Internal Revenue Service

SS-8 Unit  
SS-8 Coordinator/Site Manager  
40 Lakemont Road  
Newport, VT 05855  
Tel: (802) 334-0252  
Fax: (802) 334-5607  
web site: [www.irs.gov](http://www.irs.gov)

*Disclaimer: This brochure provides brief information and is not a substitute for laws or formal interpretations, which can be obtained from the agencies listed.*

## What is an Independent Contractor?

An independent contractor provides service(s) to employers under agreements with employers. In determining independent contractor status, all government agencies consider the amount of direction and control the business has on the individuals performing work. In general, if the business supplies training or equipment or tells the individuals when and how to do the job, the individuals are probably employees. Genuine independent contractors usually use their own tools and work their own schedule.

## Independent Contractor or Employee: Why Does it Matter?

Being classified as an employee or as an independent contractor affects the taxes you pay and how you pay them. It affects eligibility for unemployment and workers' compensation, Medicare, overtime, and other benefits and protections. Generally, employers must classify those performing work under their direction and control as employees. Others may be able to be classified as independent contractors.

## What are the Rules about Independent Contractors?

There are different rules and tests used by government agencies to determine independent contractor status, as different agencies are responsible for separate aspects of law. For example, the Internal Revenue Service (IRS) and Maine Revenue Services (MRS) refer to "common law rules." Unemployment Compensation uses the "ABC" test and Workers' Compensation considers other factors. Because agencies have different ways to determine independent contractor status, **a business may have to pay unemployment taxes and/or carry workers' compensation insurance even if IRS or Maine Revenue Services determine that, for income tax purposes, individuals may be independent contractors.**

The guidelines of each agency are too detailed for one brochure. **It is extremely important to understand how different laws may affect you. Employers should ask each agency if they consider individuals as employees or independent contractors before the work begins.**

## If your business uses independent contractors, you

- May be liable for back taxes, wages, and/or penalties if you misclassify employees as independent contractors
- Should consult each of the governmental agencies listed in this brochure to determine independent contractor/employee status
- May have to carry workers' compensation insurance
- May have to pay unemployment taxes
- Must ensure that foreign workers are legal and documented
- Do not withhold taxes or Medicare insurance

## If you work as an independent contractor, you:

- Pay your own taxes
- May not be entitled to unemployment insurance compensation or workers' compensation
- May not be protected by wage payment and recordkeeping laws, such as minimum wage and overtime
- Direct and control your work and the work of your employees

# Frequently Asked Questions about Independent Contractors

## 1. How can I find out how and when I have to pay taxes?

Contact the Internal Revenue Service (IRS), Maine Revenue Service (MRS), and Maine Department of Labor Bureau of Unemployment Compensation (contact information listed on front page).

## 2. What kind of wage statement should employees get or businesses provide?

Employees receive a W-2 wage statement. Independent contractors receive a 1099-nonwage payment statement. If you're not sure which you should get (or provide), contact the IRS.

## 3. Should businesses have written contracts with independent contractors?

Written contracts can show the intent of both parties before the beginning of their working relationship. They may be useful in determining independent contractor status. The Workers' Compensation Board requires a written contract to apply for determination of independent contractor status.

## 4. Can General Contractors put people to work without putting them on the payroll?

If IRS determines the workers are independent contractors, they do not have to be on the payroll for income tax purposes. However, even if IRS determines the workers are independent contractors, another agency may consider them employees. So, employers may have to buy workers' compensation insurance and pay unemployment tax. To avoid paying back taxes and penalties, businesses should contact each agency before workers start a job.

## 5. How can businesses employ temporary workers from other countries when they are unable to find sufficient U.S. workers?

The Alien Labor Certification program of the Maine Department of Labor provides assistance in the hiring of temporary foreign workers.

## 6. How can employers learn if they need to purchase workers' compensation insurance?

Contact the Workers' Compensation Board.

## 7. Do woodlot owners need to purchase workers' compensation insurance for workers who are harvesting trees?

A woodlot owner who gets a "Conclusive Predetermination" from the Workers' Compensation Board or contracts with a wood harvester who has an approved Certificate of Independent Status does not have to carry workers' compensation insurance for that harvester.

## 8. How do harvesters obtain proof of independent contractor status?

Apply to the Workers' Compensation Board for a Certificate of Independent Status to confirm independent contractor status.

## 9. What agency investigates wage or overtime issues for employees?

The Maine Department of Labor and the U.S. Department of Labor Wage and Hour Division investigate complaints.

## 10. What protection do independent contractors have if injured on the job?

Contact the Workers' Compensation Board to learn about rights.

## 11. Can independent contractors get unemployment compensation?

The Maine Department of Labor, Bureau of Unemployment Compensation will determine coverage.

If you don't know all the responsibilities of being—or contracting with—an independent contractor, find out now so you can make the right decisions and avoid legal and financial problems down the road.

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