

Overview on Worker Classification

Issue	Whether a worker is classified as - an EMPLOYEE under the control of the business and entitled to employee benefits <i>OR</i> - an INDEPENDENT CONTRACTOR not under the control of the business and not entitled to employee benefits	
Categories	<u>Employee:</u> - Federal payroll taxes partially paid by employer - Income tax withholding - Unemployment insurance - Workers' compensation - Minimum wage/Overtime - Responsibility for the protection and conduct	<u>Independent Contractor:</u> - Pays federal payroll taxes directly without contribution by contracting business - Receives payment without reduction - No unemployment benefits - No workers compensation benefits - No minimum wage/overtime - Responsible to own conduct and injuries caused by conduct
Tests	<u>NC:</u> Common law tests from court cases	<u>Federal:</u> IRS guidance focusing on control - Behavioral Control - Financial Control - Relationship of the Parties
NCGA Recent Acts	S.L. 2015-237 (S541) Regulate Transportation Network Companies (Uber Law)	- Presumption that driver is an independent contractor. Presumption rebutted by application of the common law test - \$1.5 liability insurance
	S.L. 2017-203 (S407) Employee Misclassification /IC Changes (Employee Fair Classification Act)	- Creates the Employee Classification Section within the Industrial Commission to receive complaints of employee misclassification, investigate complaints, coordinate investigations by other State agencies, exchange information among State agencies, and report the results of these investigations - Require State occupational licensing boards to include on every application for a license: certification that the applicant has read a notice statement on employee misclassification and disclosure of any investigations for employee misclassification.
	S.L. 2017-212 (S582) Budget & Agency Technical Corrections Sec. 4.6(a)	Repeals presumption that worker selling newspapers or magazines to consumers are not employees