

Classifying Staff: Contractors or Employees



DECAL
Thriving Child Care
Business Academy

When hiring an educator for your child care business, what's the difference between an independent contractor and an employee?

Hiring an additional person to assist you with your child care business can be beneficial to you and your program. When you have another reliable person, you can offer more quality experiences for the children in your care, you can possibly expand the number of children you serve, and you can have peace of mind knowing that someone can step in if you have an unexpected leave from work. The question becomes: is your additional person an independent contractor or an employee? This distinction is important and knowing that now will help your business and keep you from possible difficulties with the IRS.

Note: In this guide, the term contractor refers to someone who is hired to work in your child care center who is not a w-2 employee. All references in this guide to an independent contractor use this definition. Georgia Child Care Services does use the term Independent Contractor in its rules for both Child Care Learning Centers and Family Child Care Learning Homes. Child Care Services defines an independent contractor as "someone hired by the child care program or a parent of an enrolled child to offer supplemental educational or physical activities for children in care." The references to contractors throughout this guide do not refer to that type of independent contractor.

Why does it matter if you have a contractor or an employee?

Contractors and employees are handled very differently under labor laws. A contractor is treated as a completely independent worker, taking care of their own employment taxes, and often you, as the employer, have fewer legal duties to this type of worker. Alternatively, if you have someone classified as an employee, you have more responsibilities to them and greater associated costs, such as employment taxes and benefits.

Seeing that the contractor classification is a less costly route, some child care business owners will choose to have a worker treated as a contractor when, according to guidelines, they should be treated as an employee – even when the worker would prefer

the contractor classification. It is important to note that the decision on how to classify a worker isn't up to the employer or the worker. There are labor rules that help you know if the worker you have hired is a contractor or an employee.

You don't want to unintentionally misclassify someone as a contractor when they should be an employee as this can cost you time and money. Even if you make an honest mistake, you could be liable for:

- 100% of the employer taxes that you should have been paying all along,
- A portion of the worker's contribution to payroll taxes – this means you would be paying a portion of the taxes that you would have never had to pay in the first place,
- Criminal fines for thousands of dollars, and/or
- The price of any missed benefits and other employee compensation such as paid time off – things that the worker didn't receive as a contractor.

You must make the correct classification so you can avoid these potential risks. Let's look closer at how you can determine if you have a contractor or an employee.

How do you know if you have a contractor or an employee?

You know it's important to correctly classify your worker, but how do you figure out if you have a contractor or an employee?

In determining if you have a contractor or employee you want to look at the three essential elements of the definition of employment: **service, wages, and direction and control.**

1. **Service (Type of Relationship)** — Does the person work on a contractual basis or on short-duration projects (like a contractor)? Does the person work for other businesses or just for you?
2. **Wages (Financial)** — How is the person paid? For example, is the person paid every week for a set number of hours (which indicates an employee), or does the work vary (like a contractor)? Do they have regular expenses that are reimbursed (like an employee)?
3. **Direction and Control (Behavioral)** — How much control do you have over the day-to-day work? For example, do you set the requirements around the hours of work, what equipment or tools need to be used, or the training needed? (If yes, then this person is likely an employee.)

This is helpful information. Now what?

Here are some next steps to consider when it comes to classifying workers:

1. Think through the needs of the position before you hire someone before you mistakenly hire someone as a contractor and then have the liabilities that come along with it.
2. If you think you may have one or more misclassified contractors, pause, and revisit your state's guidelines. Look at the specific roles and the workers as individuals (if there is more than one) and carefully consider each part listed above. Seek help from a human resource or legal professional about what to do if you find a worker has been misclassified.
3. Whenever you are in doubt, seek advice from a human resource or legal professional. Potential misclassification of workers could come with large penalties. It's worth the cost to invest in professional advice if you have questions or want to know how best to proceed.

Additional Resources

If you have questions or need help, assistance is available.

[GaPDS Website](#)

[DECAL Thriving Child Care Business Academy Website](#)

To Find Other Study Guides: Click on [Resources](#) on the Academy home page

To Find Training: Click on [Trainings](#) on the Academy home page

To Register for Training: Click on [Schedules & Registration](#) on the Academy home page

To Sign Up for Study Groups: Fill out the [Intake Assessment](#)

For questions about coaching or study groups: Email GAcoaching@civstrat.com

To Find Other ECE Resources: Visit the [DECAL Website](#)

For General Questions about the Academy: Email thriving@decga.gov

For More Information:

[Family Child Care Learning Home Rules and Regulations](#)

[Child Care Learning Center Rules and Regulations](#)