

**Independent Contractor Definitions for Selected States**

State	Independent contractor definition.	How is the relationship proven? Exception to the definition of employee.	Penalties/Enforcement for improper classification in states with construction-specific provisions
Arizona	ARS 23-902. An independent contractor is a person engaged in work for a business, and who while so engaged is independent of that business in the execution of the work and not subject to the rule or control of the business for which the work is done, but is engaged only in the performance of a definite job or piece of work, and is subordinate to that business only in effecting a result in accordance with that business design.	<p>ARS 23-902. The business and the independent contractor may prove the independent contractor relationship through a written agreement that states that the business:</p> <ul style="list-style-type: none"> <li>• Does not require the independent contractor to perform work exclusively for the business.</li> <li>• Does not provide the independent contractor with any business registrations or licenses required to perform the specific services set forth in the contract.</li> <li>• Does not pay the independent contractor a salary or hourly rate instead of an amount fixed by contract.</li> <li>• Will not terminate the independent contractor before the expiration of the contract period, unless the independent contractor breaches the contract or violates state law.</li> <li>• Does not provide tools to the independent contractor.</li> <li>• Does not dictate the time of performance.</li> <li>• Pays the independent contractor in the name appearing on the written agreement.</li> <li>• Will not combine business operations with the person performing the services rather than maintaining these operations separately.</li> </ul>	No construction-specific provisions.

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California	<p>Labor Code Sec. 3353. "Independent contractor" means any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished.</p>	<p>Labor Code Sec. 2750.5. If the worker is performing services for which a contractor's license is needed or working for someone who has a contractor's license, there is a rebuttable presumption that the worker is an employee rather than an independent contractor. Proof of independent contractor status includes satisfactory proof that the individual:</p> <ul style="list-style-type: none"> <li>• Has the right to control and discretion as to the manner of performance of the contract for services in that the result of the work and not the means by which it is accomplished is the primary factor bargained for.</li> <li>• Is customarily engaged in an independently established business.</li> <li>• Has independent contractor status that is bona fide and is not a subterfuge to avoid employee status. A bona fide independent contractor status is further evidenced by the presence of cumulative factors such as substantial investment other than personal services in the business, holding out to be in business for oneself, bargaining for a contract to complete a specific project for compensation by project rather than by time, control over the time and place the work is performed, supplying the tools or instrumentalities used in the work other than tools and</li> </ul>	<p>The remedy to workers who are incorrectly classified is the receipt of workers compensation benefits. (<i>Bonilla v. ICM Resources</i>, 67 Cal. Comp. Cas 1287, Cal. Wrk. Comp. 2002).</p> <p>Enforcement. California created the Economic and Employment Coalition (EEEC) as a multi-agency enforcement programs consisting of investigators from the Division of Labor Standards Enforcement, Division of Occupational Safety and Health, Employment Development Department, Contractor's State License Board, and US Department of Labor. The primary emphasis of the EEEEC is to combing the enforcement efforts of the agencies and put as many investigators into the field as possible.</p>

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		<p>instrumentalities normally and customarily provided by employees, hiring employees, performing work that is not ordinarily in the course of the principal's work, performing work that requires a particular skill, holding a contractor's license, the intent by the parties that the work relationship is of an independent contractor status, or that the relationship is not severable or terminable at will by the principal but gives rise to an action for breach of contract.</p> <ul style="list-style-type: none"> <li>• Holds a valid contractor's license.</li> </ul>	
Illinois	No statutory definition	<p>The Employee Classification Act; effective date January 1, 2008. 820 ILCS 185. An individual who performs services for a contractor is deemed to be an employee unless it is show that:</p> <ul style="list-style-type: none"> <li>• The individual has been and will continue to be free from control or direction over the performance of the service for the contractor, both under the individuals contract of service and in fact.</li> <li>• The service performed by the individual is outside the usual course of services performed by the contractor.</li> <li>• The individual is engaged in an independently established trade, occupation, profession or business.</li> </ul> <p>Or, the individual will be deemed to be an independent contractor if the individual is a</p>	<p>820 ILCS 185/25. Any interested party may file a complaint with the Department of Labor (DOL) against an entity or employer if he or she has a reasonable belief that the entity or employer is violating the Employee Classification Act (Act). DOL must enforce the Act and may conduct investigation. Investigators may visit and inspect places covered by the Act. The Director of DOL has subpoena authority to compel attendance and testimony of witnesses and the production of books and records. The Director may issue cease and desist orders, collection wages and compensation due the worker, and assess civil penalties. 820 ILCS 185/30. Criminal violations will be prosecuted by the Attorney General. 820 ILCS 185/40 - 42. Persons who violate the Act are subject to a civil penalty of up to \$1,500 for</p>

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		<p>legitimate sole proprietor or partnership. A legitimate sole proprietor or partnership:</p> <ul style="list-style-type: none"> <li>• Performs the service free from the direction or control over the means and manner of providing the service, subject only to the right of the contractor for whom the service is provided to specify the desired result.</li> <li>• Is not subject to cancellation or destruction upon severance of the relationship with the contractor.</li> <li>• Has a substantial investment of capital in the sole proprietorship or partnership beyond ordinary tools and equipment and a personal vehicle.</li> <li>• Owns the capital goods and gains the profits and bears the losses of the sole proprietorship or partnership.</li> <li>• Makes its services available to the general public or the business community on a continuing basis.</li> <li>• Includes services rendered on a Federal Income Tax Schedule as an independent business or profession.</li> <li>• Performs services for the contractor under the sole proprietorship's or partnership's name.</li> <li>• When the services being provided require a license or permit, obtains and pays for the license or permit in the sole proprietorship's or partnership's name.</li> </ul>	<p>each violation. Repeat violations are subject to a penalty up to \$2,500, and the employer or entity's name will be posted on a list on DOL's website. No state contracts may be awarded to an employer or entity on the list until 4 years after the last violation.</p> <p>820 ILCS 185/45. Willful violations are subject to penalties up to double the statutory amount, punitive damages, and are considered a Class C misdemeanor. Subsequent violations within a 5 year period are treated as a Class 4 felony.</p> <p>820 ILCS 185/50. Civil penalties collected by DOL are to be used for the administration and investigation of the Act.</p> <p>820 ILCS 185/60. Private right of action is allowed. The person bringing such action may collect: the amount of any wages, salary, benefits, or other compensation denied to the person, plus an equal amount in liquidated damages; compensatory damages and an amount up to \$500 for each violation; and attorneys' fees.</p>

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		<ul style="list-style-type: none"> <li>• Furnishes the tools and equipment necessary to provide the service.</li> <li>• Hires its own employees without contractor approval, pays the employees without reimbursement from the contractor and reports the employee's income to the Internal Revenue Service.</li> <li>• Is not represented as an employee of the contractor to its customers.</li> <li>• Has the right to perform similar services for others on whatever basis and whenever it chooses.</li> </ul>	
Kansas	No statutory definition.	<p>44-703. Services performed by an individual for wages shall be deemed to be employment until it is shown to the satisfaction of the secretary of labor that:</p> <ul style="list-style-type: none"> <li>• The individual has been and will continue to be free from control or direction over the performance of the services, both under the individual's contract of hire and in fact.</li> <li>• The service is outside the usual course of the business for which the service is performed or the service is performed outside of all the places of business of the enterprise for which the service is performed.</li> </ul>	No construction-specific provisions.
Maine	Title 39-A, Part 1, Sec. 102. "Independent contractor" means a person who performs services for another under contract, but who is	Title 39-A, Part 1, Sec. 102. The worker's compensation board determines whether the independent contractor relationship exists by looking at whether or not:	No construction-specific provisions.

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	not under the essential control or superintendence of the other person while performing those services.	<ul style="list-style-type: none"> <li>• A contract exists for the person to perform a certain piece or kind of work at a fixed price.</li> <li>• The person employs assistants with the right to supervise their activities.</li> <li>• The person has an obligation to furnish any necessary tools, supplies and materials.</li> <li>• The person has the right to control the progress of the work, except as to final results.</li> <li>• The work is part of the regular business of the employer.</li> <li>• The person's business or occupation is typically of an independent nature.</li> </ul> <p>And:</p> <ul style="list-style-type: none"> <li>• The amount of time for which the person is employed.</li> <li>• The method of payment, whether by time or by job.</li> </ul> <p>In applying these factors, the board may not give any particular factor a greater weight than any other factor, nor may the existence or absence of any one factor be decisive. The board shall consider the totality of the relationship in determining whether an employer exercises essential control or superintendence of the person.</p>	
Massachusetts	No statutory definition.	<p>Title XXI, Chapter 149, section 148B. An individual shall be considered to be an employee unless:</p> <ul style="list-style-type: none"> <li>• The individual is free from control and</li> </ul>	<p>Title XXI, Chapter 149, section 27C. A willful violation of section 148B shall be punished by a fine of up to \$25,000 or by imprisonment for up to one year. Subsequent willful offenses shall be</p>

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		<p>direction in the performance of the service.</p> <ul style="list-style-type: none"> <li>• The service is performed outside the usual course of the business of the employer.</li> <li>• The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.</li> </ul>	<p>punished by a fine of up to \$50,000 or by imprisonment for up to two years. First violations without a willful intent are punishable by a fine of up to \$10,000 or by imprisonment for up to six months. Subsequent offenses are punishable by a fine of up to \$25,000 or imprisonment for up to one year. A contractor or subcontractor who has willfully violated section 148B may not contract with the state on public works projects for five years from the date of conviction. If the violation is not willful, the contractor is prohibited from contracting with the state for up to six months for the first offense and up to three years for subsequent offenses.</p>
Minnesota	No statutory definition	<p>176.042, 268.035. A worker doing commercial or residential building construction or improvement, in the public or private sector, performing services in the course of the trade, business, profession, or occupation of the employer, shall be considered an employee and not an independent contractor unless the worker meets all the following conditions:</p> <ul style="list-style-type: none"> <li>• Maintains a separate business with the independent contractor's own office, equipment, materials, and other facilities.</li> <li>• Holds or has applied for a federal employer identification number or has filed business or self-employment income tax returns with the federal Internal Revenue Service based on that work or service in the previous year.</li> </ul>	<p>268.184. An employer who makes false statements to reduce payment of unemployment benefits is subject to a penalty of \$500 or 50 percent of the reduced unemployment benefits or payment required, whichever is greater.</p>

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		<ul style="list-style-type: none"> <li>• Operates under contracts to perform specific services or work for specific amounts of money under which the independent contractor controls the means of performing the services or work.</li> <li>• Incurs the main expenses related to the service or work that the independent contractor performs under contract.</li> <li>• Is responsible for the satisfactory completion of work or services that the independent contractor contracts to perform and is liable for a failure to complete the work or service.</li> <li>• Receives compensation for work or service performed under a contract on a commission or per job or competitive bid basis and not on any other basis.</li> <li>• May realize a profit or suffer a loss under contracts to perform work or service.</li> <li>• Has continuing or recurring business liabilities or obligations.</li> <li>• The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.</li> </ul>	
Nevada	NRS 617.120 Occupational Diseases. "Independent contractor" means any person who renders service for a specified recompense for a specified result, under the control of his principal as to the	<p>NRS 617.175 A person is not an employer if:</p> <ul style="list-style-type: none"> <li>• He or she enters into a contract with another person or business which is an independent enterprise.</li> <li>• He or she is not in the same trade, business, profession or occupation as the</li> </ul>	No construction-specific provisions.



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	result of his work only and not as to the means by which such result is accomplished.	<p>independent enterprise.  An independent enterprise means a person who holds himself or herself out as being engaged in a separate business and:</p> <ul style="list-style-type: none"> <li>• Holds a business or occupational license in his or her own name; or</li> <li>• Owns, rents or leases property used in furtherance of his or her business.</li> </ul>	
New Hampshire	No statutory definition.	<p>SB 92 (2007); RSA 281-A:2 Persons who perform services for pay for an employer are presumed to be employees. The presumption may be rebutted by proof that an individual meets all of the following:</p> <ul style="list-style-type: none"> <li>• The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under the workers' compensation statutes.</li> <li>• The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer.</li> <li>• The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit</li> </ul>	No construction-specific provisions.

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		<p>the employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.</p> <ul style="list-style-type: none"> <li>• The person hires and pays the person’s assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants’ work.</li> <li>• The person holds himself or herself out to be in business for himself or herself.</li> <li>• The person has continuing or recurring business liabilities or obligations.</li> <li>• The success or failure of the person’s business depends on the relationship of business receipts to expenditures.</li> <li>• The person receives compensation for work or services performed and remuneration is not determined unilaterally by the hiring party.</li> <li>• The person is responsible in the first instance for the main expenses related to the service or work performed. However, this shall not prohibit the employer or person offering work from providing the supplies or materials necessary to perform the work.</li> <li>• The person is responsible for satisfactory completion of work and may be held</li> </ul>	

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		<p>contractually responsible for failure to complete the work.</p> <ul style="list-style-type: none"> <li>• The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer’s special requirements or are located on the employer’s premises.</li> <li>• The person is not required to work exclusively for the employer.</li> </ul>	
New Jersey	No statutory definition.	<p>34:20-4 Services performed in the making of improvements to real property by an individual for remuneration paid by an employer shall be deemed to be employment unless it is shown to the satisfaction of the Department of Labor and Workforce Development that:</p> <ul style="list-style-type: none"> <li>• The individual has been and will continue to be free from control or direction over the performance of that service, both under his or her contract of service and in fact.</li> <li>• The service is either outside the usual course of the business for which the service is performed, or the service is performed outside of all the places of business of the employer for which the service is performed.</li> <li>• The individual is customarily engaged in an independently established trade, occupation, profession or business.</li> </ul>	<p>34:20-5. An employer who improperly classifies an employee is guilty of a disorderly persons offense and shall be fined between \$100 and \$1,000, or imprisoned for between 10 and 90 days. Depending on the amount of the contract and if the failure is done knowingly, the employer is guilty of a crime in the second, third, or fourth degree. The employer must provide restitution to the employees that were underpaid. The Commissioner of Labor and Workforce Development may assess administrative penalties up to \$2,500 for a first violation and up to \$5,000 for subsequent violations.</p> <p>34:20-6. An employer who has knowingly failed to properly classify an individual shall be placed on a list of employers who are prohibited from contracting with the state on any public works projects for a period of three years.</p> <p>34:20-7. An employer who improperly classifies an employee may have his or her contractor’s registration suspended. Subsequent violations may</p>

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			<p>result in a stop work order being issued at every site at which a violation occurred. An employer who conducts business in violation of a stop work order is subject to a \$5,000 penalty. Additionally, the employer is subject to a \$5,000 for each employee improperly classified.</p> <p>34:20-8. An individual employed as a construction worker who has been improperly classified may bring a civil action for damages against the employer. The amount awarded to the individual may include attorneys' fees.</p>
New Mexico	No statutory definition.	<p>60-13-3.1 Establishes what constitutes an employer and employee relationship in the construction industry. A contractor who is an employer must consider workers providing labor or services to be employees unless the following standards indicative of an independent contractor are met:</p> <ul style="list-style-type: none"> <li>• The person providing labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results.</li> <li>• The person providing labor or services is responsible for obtaining business registrations or licenses required by state law or local ordinance for the person to provide the labor or services.</li> <li>• The person providing labor or services furnishes the tools or equipment</li> </ul>	<p>60-13-3.1. A contractor who intentionally and willfully improperly classifies an employee is guilty of a misdemeanor and shall be punished by a fine of up to \$5,000 or imprisoned for a term of up to six months. Upon conviction, the construction industries commission must suspend, revoke, or refuse to renew the contractor's license.</p>

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		<p>necessary to provide the labor or services.</p> <ul style="list-style-type: none"> <li>• The person providing labor or services has the authority to hire and fire employees to perform the labor or services.</li> <li>• Payment for labor or services is made upon completion of the performance of specific portions of a project or is made on the basis of a periodic retainer.</li> <li>• The person providing labor or services represents to the public that the labor or services are to be provided by an independently established business.</li> </ul> <p>A person is engaged in an independently established business when four or more of the following circumstances exist:</p> <ul style="list-style-type: none"> <li>• Labor or services are primarily performed at a location separate from the person's residence or in a specific portion of the residence that is set aside for performing labor or services.</li> <li>• Commercial advertising or business cards are purchased by the person, or the person is a member of a trade or professional association.</li> <li>• Telephone or email listings used for the labor or services are different from the person's personal listings.</li> <li>• Labor or services are performed only pursuant to a written contract.</li> <li>• Labor or services are performed for two</li> </ul>	

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		<p>or more persons within a period of one year.</p> <ul style="list-style-type: none"> <li>The person assumes financial responsibility for errors and omissions in labor or services as evidenced by insurance, performance bonds and warranties relating to the labor or services being provided.</li> </ul>	
New York	No statutory definition	No statutes describe this relationship. The state Department of Labor relies on case law to describe the relationship.	No construction-specific provisions.
Oregon	<p>ORS 670.600 “Independent contractor” means a person who provides services for remuneration and who, in the provision of the services:</p> <ul style="list-style-type: none"> <li>Is free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired results.</li> <li>Is customarily engaged in an independently established business.</li> <li>Is licensed as a construction contractor or architect if the services being provided require such licensing.</li> <li>Is responsible for obtaining</li> </ul>	If the worker is licensed with the Construction Contractors Board or the Landscape Contractors Board, they are presumed by Workers Compensation Division to be an independent contractor if they are involved in activities subject to and working under that license.	670.605. The Department of Revenue, the Workers’ Compensation board, the Employment Department, the Construction Contractor’s Board, and the Landscape Contractors Board must cooperate with enforcement and compliance activities to ensure among the agencies the consistent interpretation and application of 670.600.

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	<p>other licenses or certificates necessary to provide the services.</p> <p>A person is considered to be customarily engaged in an independently established business if any three of the following requirements are met:</p> <p>(1) The person maintains a business location:</p> <ul style="list-style-type: none"> <li>• That is separate from the business or work location of the person for whom the services are provided; or</li> <li>• That is in a portion of the person’s residence and that portion is used primarily for the business.</li> </ul> <p>(2) The person bears the risk of loss related to the business or the provision of services as shown by factors such as:</p> <ul style="list-style-type: none"> <li>• The person enters into fixed-price contracts;</li> <li>• The person is required to correct defective work;</li> <li>• The person warrants the services provided; or</li> <li>• The person negotiates</li> </ul>		

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	<p>indemnification agreements or purchases liability insurance, performance bonds or errors and omissions insurance.</p> <p>(3) The person provides contracted services for two or more different persons within a 12-month period, or the person routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.</p> <p>(4) The person makes a significant investment in the business, through means such as:</p> <ul style="list-style-type: none"> <li>• Purchasing tools or equipment necessary to provide the services;</li> <li>• Paying for the premises or facilities where the services are provided; or</li> <li>• Paying for licenses, certificates or specialized training required to provide the services.</li> </ul> <p>(5) The person has the authority to hire other persons to provide or to assist in providing the services and has the authority to fire those persons.</p>		



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Pennsylvania	No statutory definition	Unemployment compensation law. Section 4 (1)(2)(b). Services performed by an individual for wages are deemed to be employment unless it is shown that the individual has been and will continue to be free from control or direction over the performance of the services and the individual is engaged in an independently established trade, occupation, profession, or business.	No construction-specific provisions.

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