

INDEPENDENT CONTRACTOR PRESUMPTION AND MISCLASSIFICATION DEFINITION

NRS 608.0155 Persons presumed to be independent contractor.

1. Except as otherwise provided in subsection 2, for the purposes of this chapter, a person is conclusively presumed to be an independent contractor if:

(a) Unless the person is a foreign national who is legally present in the United States, the person possesses or has applied for an employer identification number or social security number or has filed an income tax return for a business or earnings from self-employment with the Internal Revenue Service in the previous year;

(b) The person is required by the contract with the principal to hold any necessary state business license or local business license and to maintain any necessary occupational license, insurance or bonding in order to operate in this State; and

(c) The person satisfies three or more of the following criteria:

(1) Notwithstanding the exercise of any control necessary to comply with any statutory, regulatory or contractual obligations, the person has control and discretion over the means and manner of the performance of any work and 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 principal in the contract.

(2) Except for an agreement with the principal relating to the completion schedule, range of work hours or, if the work contracted for is entertainment, the time such entertainment is to be presented, the person has control over the time the work is performed.

(3) The person is not required to work exclusively for one principal unless:

(I) A law, regulation or ordinance prohibits the person from providing services to more than one principal; or
(II) The person has entered into a written contract to provide services to only one principal for a limited period.

(4) The person is free to hire employees to assist with the work.

(5) The person contributes a substantial investment of capital in the business of the person, including, without limitation, the:

(I) Purchase or lease of ordinary tools, material and equipment regardless of source;
(II) Obtaining of a license or other permission from the principal to access any work space of the principal to perform the work for which the person was engaged; and
(III) Lease of any work space from the principal required to perform the work for which the person was engaged.

➤ The determination of whether an investment of capital is substantial for the purpose of this subparagraph must be made on the basis of the amount of income the person receives, the equipment commonly used and the expenses commonly incurred in the trade or profession in which the person engages.

2. A natural person is conclusively presumed to be an independent contractor if the person is a contractor or subcontractor licensed pursuant to [chapter 624](#) of NRS or is directly compensated by a contractor or subcontractor licensed pursuant to [chapter 624](#) of NRS for providing labor for which a license pursuant to [chapter 624](#) of NRS is required to perform and:

(a) The person has been and will continue to be free from control or direction over the performance of the services, both under his or her contract of service and in fact;

(b) The service is either outside the usual course of the business for which the service is performed or that the service is performed outside of all the places of business of the enterprises for which the service is performed; and

(c) The service is performed in the course of an independently established trade, occupation, profession or business in which the person is customarily engaged, of the same nature as that involved in the contract of service.

3. The fact that a person is not conclusively presumed to be an independent contractor for failure to satisfy three or more of the criteria set forth in paragraph (c) of subsection 1 does not automatically create a presumption that the person is an employee.

4. As used in this section:

(a) “Foreign national” has the meaning ascribed to it in [NRS 294A.325](#).

(b) “Providing labor” does not include the delivery of supplies.

(Added to NRS by [2015, 1743](#); A [2019, 3159](#))

NRS 607.216 “Employee misclassification” defined. As used in [NRS 607.216](#) to [607.2195](#), inclusive, unless the context otherwise requires, “employee misclassification” means the practice by an employer of improperly classifying employees as independent contractors to avoid any legal obligation under state labor, employment and tax laws, including, without limitation, the laws governing minimum wage, overtime, unemployment insurance, workers’ compensation insurance, temporary disability insurance, wage payment and payroll taxes.

(Added to NRS by [2019, 3157](#))