



LOUISIANA  
**WORKFORCE**  
COMMISSION

**UNEMPLOYMENT TAX GUIDELINES  
FOR EMPLOYERS:  
Independent Contractors**

**Employers are required to properly classify employees and to pay appropriate unemployment insurance taxes and workers' comp premiums. Misclassifying workers as independent contractors is considered fraud, whether intentional or not. Penalties for misclassifying employees were significantly increased in the 2021 Louisiana Legislative Regular Session.**

**In addition to specific criteria, Louisiana utilizes a three-fold test in determining whether the worker or entity may be considered an independent contractor.**

### **THREE FOLD TEST (INDEPENDENT CONTRACTORS) R.S. 23:1472 (12) (E) I, II, III**

Services performed by an individual for wages or under any contract of hire, written or oral, expressed or implied, shall be deemed to be employment subject to this Chapter unless and until it is shown to the satisfaction of the administrator that:

1. Such individual has been and will continue to be free from any control or direction over the performance of such services both under his contract and in fact; and
2. Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and
3. Such individual is customarily engaged in an independently established trade, occupation, profession or business.

**CAUTION:** Although you may not be subject to the Federal Unemployment Tax Act (FUTA), you may be subject to Louisiana Employment Security Law.

To be considered an ***independent contractor***, an individual or entity must control the performance, methods, or processes used to perform services and meet at least six of the following criteria:

### **INDEPENDENT CONTRACTOR CRITERIA**

1. The individual or entity operates an independent business that provides services for or in connection with the contracting party.
2. The individual or entity represents the provided services as self-employment available to others, including through the use of a platform application to obtain work opportunities or as a lead generation service.
3. The individual or entity accepts responsibility for all tax liability associated with payments received from or through the contracting party.
4. The individual or entity is responsible for obtaining and maintaining any required registration, licenses, or other authorization necessary for the legal performance of the services rendered by him as the contractor.
5. The individual or entity is not insured under the contracting party's health insurance or workers' compensation insurance coverage and is not covered for unemployment insurance benefits.

6. The individual or entity has the right to accept or decline requests for services by or through the contracting party and is able to perform services for or through other parties or can accept work from and perform work for other businesses and individuals besides the contracting party even if the individual voluntarily chooses not to exercise this right or is temporarily restricted from doing so.
7. The contracting party has the right to impose quality standards or deadline for completion of services performed, or both, but the individual or entity determines the days worked and the time periods of work.
8. The individual or entity furnishes the major tools or items of equipment needed to perform the work.
9. The individual or entity is paid a fixed or contract rate for the work performed and the contracting party does not pay the individual or entity a salary or wages based on an hourly rate.
10. The individual or entity is responsible for the majority of expenses incurred in performing the services, unless the expenses are reimbursed under an express provision of a written contract between the parties or the expenses reimbursed are commonly reimbursed under industry practice.
11. The individual or entity can use assistants as deemed proper for the performance of the work and is directly responsible for supervision and compensation.

**The following considerations must be taken into account:**

- Factors must be weighed. Each case has to be considered on its own facts, and the various factors tending to indicate one or the other relationship have to be weighed.
- General control is sufficient to consider the relationship as employment. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so.
- Written contract. The existence of a written contract is indicative, but not determinative, of independent contractor status. A written contract does not mean there is an independent contract relationship nor does the absence of a written contract indicate that it necessarily is an employment relationship.