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### Protecting Your Legal Rights- Independent Contractor or Employee?

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With few exceptions employment laws apply only to employees and not to independent contractors. Federal and state laws vary regarding the criteria to legally determine whether an individual is considered an independent contractor or employee. Generally, an independent contractor is an individual that performs services free from the direction and control by the company with regard to both the manner and method that the work is performed. The determination is important since unlike an employee, an independent contractor is not eligible for overtime pay, benefits, unemployment or workers' compensation benefits. Moreover, an independent contractor is exempt from protection under Title VII and the Age Discrimination in Employment Act which protects employees from employment discrimination.

To clarify the relationship, the individual and the business should have a contract which defines the independent contractor relationship. Such an agreement should state that the contractor is not an agent or employee of the company and that the contractor has the sole discretion to determine when, during what hours and where the work will be performed. Additionally, the contract should specify the amount of compensation to be paid for the services performed and provide that the independent contractor will invoice the business for those services. Importantly, the agreement should specify that the independent contractor will be responsible for the payment of all taxes. To better protect the contractor and the business, the contract should provide under what terms the agreement may be terminated.

Because the designation of an individual as independent contact has significant legal consequences for the individual and the business, the relationship should be carefully analyzed and a contract should be prepared which details the terms of the relationship. Of course, the best time to determine the legal effect of the relationship is before the commencement of work. As such, it is highly advisable to consult with an attorney to analyze the proposed relationship and to prepare a valid and enforceable independent contractor agreement. For further information, please visit our web site at [www.joettedoran.com](http://www.joettedoran.com).

*This article is not intended as legal advice. You should consult with an attorney for individual advice regarding your own situation.*

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