

Working Choices Explained

Independent Contractor, Renter, and Employee are three different types of working relationships that exist within the tattoo industry. In this section we will discuss an overview of each of these relationship types. For the sake of clarity, Apprenticeships will be a topic given its own section within this guide. This information is intended to describe the professional options available to those who have successfully completed an apprenticeship and are seeking working relationships as experienced practitioners. Misclassification is rampant in the tattoo industry. It is important to understand classification standards and what you should properly be classified as.

Independent Contractor

An *Independent Contractor* is an individual operating under a contracted agreement within a business to perform work for a set and specific period of time. These individuals file a 1099 tax form within the United States of America. There is a set legal criteria that must be met in order to be considered an independent contractor. In our industry it is common to be contracted for a set % of sales. In the past, many artists have engaged in verbal agreements when initiating this arrangement type, and while we cannot provide legal advice, we do not recommend verbal- only contracting. Written contracts can seem cumbersome, but it can be imperative to have physical legal documentation outlining the terms of such contracts to protect both the contractor and contracting business. This helps lay out expectations from each party, and can aid in potential future disputes. Contracts do not have to impose harsh or unreasonable penalties for termination of relationship, a main reason many find contracts to be intimidating to work under- and understandably so.

In the state of Ohio, Job and Family Services states that “The services of an individual that is determined to be an independent contractor (under contract to perform a special service for an employer) are excluded from covered employment. To be excluded from employment, it must be established by the employer that the contractor is free from direction or control over the service being performed.’ (*Employee vs. Independent Contractor*. (n.d.)) We recommend checking with your personal state and local laws regarding contracting prior to determining employment type. Independent contractors are typically only covered by the general liability policy of the business they are contracted through, and likely would need their own policy(s) for professional liability, and/or tools of the trade, equipment, personal effects, etc. Independent contractors are responsible for their own tax filing and tax liabilities generated from their income as a contractor.

Renter

A *renter* is someone who is simply renting a space (booth, room, etc.) and operating their own business within such space. In our industry this often is someone who has a rental agreement with rent due on a flexible, daily, weekly, or monthly basis. This is done for a contract term where the space is rented/leased for either a set duration, or on a rolling basis. Rental agreements can vary based on circumstances of rental relationship. In any regard, we recommend having a physical written agreement for the protection, and confirmation of expectations between both parties. Per OSHA, someone operating their own tattoo business, regardless if it is within another business, MUST operate with their own infection and exposure prevention and control plan also on file, that is in compliance with the studio license.

Practitioners, even renters, must adhere to the provisions set forth specific to the business licensed per their licensing body to be in compliance. There may be different expectations set forth from studio to studio. Renters are also the responsible party in meeting all other OSHA required standards, and the compliance standards set forth for their practice at the federal, state, and local levels. They would also want to look into having all client releases, documentation, etc. to be done with their business listed as an added party on such documentation. This would list them as a potentially responsible party to be released. As an individual business, that business would typically be the responsible party for insuring the space they occupy (i.e. renters insurance), as well as professional liability insurance. Businesses are responsible for filing their own taxes, processing their own payments, making sure sales tax is handled, vendor licensing maintained, etc. It is recommended that you keep proof of payment for rent paid so that you have the receipts readily available for tax filing.

Employee

An employee is someone who performs a job in exchange for wages or salary, and meets the criteria of an employment relationship. The IRS states that when an employment relationship exists “Every employer engaged in a trade or business who pays remuneration, including noncash payments of \$600 or more for the year (all amounts if any income, social security, or Medicare tax was withheld) for services performed by an employee must file a Form W-2 for each employee (even if the employee is related to the employer) from whom:

- Income, Social Security, or Medicare tax was withheld.
- Income tax would have been withheld if the employee had claimed no more than one withholding allowance or had not claimed exemption from withholding on Form W-4, Employee's Withholding Allowance Certificate.” (*Internal Revenue Service. (n.d.)*)

In Ohio, Job and Family services position is that: “An employer-employee relationship exists when a person who hires an individual to perform services has the right to exercise control over the manner and means by which the individual performs his or her services. The right of control, whether or not exercised, is the most important factor in determining the relationship. The right

to discharge a worker at will and without cause is strong evidence of the right to exercise direction and control.” (*Employee vs. Independent Contractor*. (n.d.))

Employees are typically covered under the general, and liability insurances of the business for which they are employed. A copy of the certificate of coverage should be available upon request by the employer. An employee should be aware of all OSHA, federal, state, and local regulations pertaining to their employment, and the responsibilities of their employer. However, their employer assumes more liability in this form of a working relationship when it comes to insurances, taxation, etc.. There may be other benefits available to those classified as employees outside of the taxes paid by the employer.

Within the tattoo industry, it is common for employers to bring employees on in a commission based employment scenario. Commission based relationships can exist through multiple arrangements. The most common forms of these arrangements can be:

- Straight commission: Employees get a % of sales and no additional compensation.
- Base pay (or salary) plus commission: Employees are guaranteed a rate of pay, but also the earned commission from sales of goods or services.
- Variable commission: This is like straight commission where an employee receives payment based on a % of sales, but this % may sometimes change depending on targets, a sliding scale, or other metrics.

For example, at our studio an employee would receive a negotiated commission rate, but would revert to a base pay if their commission didn't exceed such negotiated pay rate for time spent working.

Disclaimer

In any case, it is important for you to determine what path of working is most suitable for you and the circumstances you desire to work in. There are pros and cons to every decision. We cannot provide legal or operating advice on what is best for you as a practitioner, as this falls outside of our scope of practice. This document should not be construed as professional advice in any form. It is a simple explanation and overview of working types based on information available to the public. It is important to consult with a licensed professional for advice in legal, financial, governmental, etc. when making business decisions.

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