

# Independent Contractors: Utah

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A Q&A guide to state law on independent contractor status for private employers in Utah. This Q&A addresses how independent contractors are classified under state law, including the various tests to evaluate worker status, penalties for misclassification, and practices to avoid misclassification. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across several jurisdictions (see Independent Contractors: State Q&A Tool).

## Independent Contractor Basics

### 1. Summarize how the issue of independent contractors is analyzed under state law.

There is no single established definition of independent contractor under Utah law. Different tests are applied, depending on the circumstances, to determine whether an individual is an employee or an independent contractor for purposes of:

- Workers' compensation.
- Unemployment insurance.
- Tax liability.
- Common law.

The same employee could be an employee in one context and an independent contractor in another.

### 2. Is the term independent contractor defined by statute, regulation, or case law (not including any required elements)? If so, what is the definition? Please cite the appropriate authority.

#### Employment Security Act: Utah Code §§ 35A-4-101 to 35A-4-508

Regulations implementing Utah's Employment Security Act define the term independent contractor as a worker who:

- Is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as the services performed.
- Provides the services free from the employer's control and direction.

(Utah Admin. Code r. 994-204-301(1).)

A worker must clearly establish their status as an independent contractor by taking steps that demonstrate their independence on informed business decisions (Utah Admin. Code r. 994-204-301(1)).

#### Workers' Compensation Act: Utah Code §§ 34A-2-101 to 34A-2-1005

Utah's Workers' Compensation Act (WCA) defines an independent contractor as any person who, while performing work for another, is:

- Independent of the employer in all that pertains to the execution of the work.
- Not subject to the routine rule or control of the employer.
- Engaged only in the performance of a definite job or piece of work.
- Subordinate to the employer only in effecting a result according to the employer's design.

(Utah Code § 34A-2-103(2)(b)(i).)

### Utah State Tax Commission

The [Utah State Tax Commission](#) (USTC) does not specifically define the term independent contractor. Instead, the USTC uses the factors outlined in [IRS Publication 1779: Independent Contractor or Employee](#) to determine whether an individual is an independent contractor.

### Common Law

There is no recent Utah common law on the classification of independent contractors. Although Utah courts applied a right-to-control standard in early cases, recent decisions have analyzed worker classification exclusively under the WCA (see *Dayton v. Free*, 148 P. 408, 411 (Utah 1914); see Question 4: Workers' Compensation Act).

**3. For each type of independent contractor, please describe the benefits of using an independent contractor over an employee to perform work.**

### Employment Security Act: Utah Code §§ 35A-4-101 to 35A-4-508

Utah's Employment Security Act does not cover independent contractors. Therefore:

- Employers do not need to pay unemployment insurance taxes or other payroll taxes for independent contractors.
- Independent contractors are not eligible for unemployment benefits.

### Workers' Compensation Act: Utah Code §§ 34A-2-101 to 34A-2-1005

Utah's Workers' Compensation Act does not cover independent contractors. Therefore:

- Employers do not need to obtain workers' compensation coverage for independent contractors.
- Independent contractors are not eligible to receive or file workers' compensation claims.

### Utah State Tax Commission

Employers are not required to contribute toward:

- Federal and state income tax withholding.
- Social Security and Medicare taxes.
- Unemployment insurance.

Independent contractors are required to pay their own income tax and self-employment tax.

### Independent Contractor Tests

**4. What tests are used to evaluate whether a worker is an independent contractor? Please describe each test and explain when each is used.**

### Employment Security Act: Utah Code §§ 35A-4-101 to 35A-4-508

Utah courts follow the statutory tests when considering entitlement to unemployment benefits (*Creameries of Am. v. Indus. Comm'n*, 102 P.2d 300, 303-04 (Utah 1940)). The following factors determine whether a worker is an employee or an independent contractor under Utah's Employment Security Act:

- **Independently established.** An individual is customarily engaged in an independently established trade, occupation, profession, or business if the individual is, when the service is performed:
  - regularly engaged in a trade, occupation, profession, or business of the same nature as the service performed; and
  - the trade, occupation, profession, or business is established independently of and exists apart from a relationship with the particular employer and does not depend on a relationship with any one employer for its continued existence.
- **Control and direction.** A worker is deemed an employee under the Employment Security Act when an employer either retains the right to control and direct the performance of a service or actually exercises control and direction over the worker who performs the service, including both:
  - the result to be accomplished by the work; and
  - the manner and means by which the worker achieves the result.

(Utah Admin. Code r. 994-204-303.)

### Independently Established

The following factors, if applicable, determine whether a worker is customarily engaged in an independently established trade or business:

- **Separate place of business.** The worker has a place of business separate from the employer's.

- **Tools and equipment.** The worker has a substantial investment in the tools, equipment, or facilities customarily required to perform the services. However, “tools of the trade” used by certain trades or crafts do not necessarily demonstrate independence.
- **Other clients.** The worker regularly performs services of the same nature for other customers or clients and is not required to work exclusively for one employer.
- **Profit or loss.** The worker can realize a profit or risk a loss from expenses and debts incurred through an independently established business activity.
- **Advertising.** The worker advertises services:
  - in telephone directories;
  - in newspapers;
  - in magazines;
  - on the internet; or
  - by other methods clearly demonstrating an effort to generate business.
- **Licenses.** The worker has obtained any required and customary business, trade, or professional licenses.
- **Business records and tax forms.** The worker maintains records or documents that validate expenses, business asset valuation, or income earned so the worker may file self-employment and other business tax forms with the Internal Revenue Service and other agencies.

(Utah Admin. Code r. 994-204-303(1)(b).)

If an employer proves to the satisfaction of the [Utah Department of Workforce Services](#) that the worker is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as the service in question, there will be a rebuttable presumption that the employer did not have the right of or exercise direction or control over the service (Utah Admin. Code r. 994-204-303(1)(c)).

### Control and Direction

The following factors, if applicable, help determine whether an employer has the right to or exercises control and direction over the service of a worker:

- **Instructions.** A worker who must comply with other persons’ instructions about how the service is to be performed is ordinarily an employee. This factor is present if the employer for whom the service is performed has the right to require compliance with the instructions.

- **Training.** Training a worker by certain methods indicates that the employer for whom the service is performed expects the service to be performed in a particular manner. These methods may include but are not limited to:
  - requiring or expecting an experienced person to work with the worker;
  - corresponding with the worker; or
  - requiring the worker to attend meetings.
- **Pace or sequence.** A requirement that the service must be provided at a pace or ordered sequence of duties imposed by the employer indicates control or direction. The coordinating and scheduling of the services of more than one worker does not indicate control and direction.
- **Work on employer’s premises.** A requirement that the service be performed on the employer’s premises indicates that the employer for whom the service is performed has retained a right to supervise and oversee how the service is performed, especially if the service could be performed elsewhere.
- **Personal service.** A requirement that the service be performed personally and cannot be assigned to others indicates the right to control or direct how the work is performed.
- **Continuous relationship.** A continuous service relationship between the worker and the employer indicates that an employer-employee relationship exists. A continuous relationship:
  - may exist where work is performed regularly or at frequently recurring, although irregular, intervals; or
  - does not exist where the worker is contracted to complete specifically identified projects, even though the service relationship may extend over a significant period of time.
- **Set hours of work.** The establishment of set hours or a specific number of work hours by the employer indicates control.
- **Method of payment.** Payment by the hour, week, or month points to an employer-employee relationship if this payment method is not merely a convenient way of paying progress billings as part of a fixed price agreed on as the cost of a job. Control may also exist when the employer determines the method of payment.

(Utah Admin. Code r. 994-204-303(2).)

### Workers' Compensation Act: Utah Code §§ 34A-2-101 to 34A-2-1005

In *Harry L. Young & Sons v. Ashton*, the Utah Supreme Court stated that, under the Workers' Compensation Act (WCA), an employee is generally one who is both:

- Hired and paid a salary, wage, or at a fixed rate to perform the employer's work as directed by the employer.
- Subject to a comparatively high degree of control in performing those duties.

(538 P.2d 316, 318 (Utah 1975).)

In contrast, the court stated that an independent contractor is one who:

- Is engaged to do some particular project or piece of work, usually for a set total sum.
- May do the job in their own way, subject to only minimal restriction or controls.
- Is responsible only for the satisfactory completion of the project or work.

(*Harry L. Young & Sons*, 538 P.2d at 318.)

The main factors considered include:

- Any covenants or agreements (express or implied) that exist concerning the right of direction and control over the employee.
- The right to hire and fire.
- Whether the method of payment is:
  - in wages or fees; or
  - for a completed job or project.
- The furnishing of the equipment.

(*Harry L. Young & Sons*, 538 P.2d at 318.)

### Utah State Tax Commission

The [Utah State Tax Commission](#) (USTC) does not specifically define the term independent contractor. Instead, the USTC uses the factors outlined in [IRS Publication 1779: Independent Contractor or Employee](#) to determine whether an individual is an independent contractor.

### Common Law

There is no recent common law in Utah on the classification of independent contractors. Utah courts:

- Apply the right to control test (see *Dayton*, 148 P. at 411; see Workers' Compensation Act).
- Also consider the right to end the service. (*Thorley v. Kolob Fish & Game Club*, 373 P.2d 574, 576 (Utah 1962).)

## Administration and Enforcement

### 5. For each independent contractor type, what entity administers and enforces independent contractor classification?

#### Employment Security Act: Utah Code §§ 35A-4-101 to 35A-4-508

The [Utah Department of Workforce Services](#) enforces the Employment Security Act.

#### Workers' Compensation Act: Utah Code §§ 34A-2-101 to 34A-2-1005

The [Utah Labor Commission](#) enforces the Workers' Compensation Act.

### Utah State Tax Commission

The [Utah State Tax Commission](#) administers independent contractor classification.

### 6. How are independent contractor classifications selected for misclassification evaluation by each enforcement agency (for example, by random selection or by complaint by a worker or both)?

#### Employment Security Act: Utah Code §§ 35A-4-101 to 35A-4-508

Misclassification evaluations by the [Utah Department of Workforce Services](#) typically arise when a worker classified by the employer as an independent contractor applies for unemployment benefits. Misclassification evaluations may also be triggered by:

- A random audit.
- Worker complaints.

### Workers' Compensation Act: Utah Code §§ 34A-2-101 to 34A-2-1005

Misclassification evaluations by the [Utah Labor Commission](#) typically arise when a worker classified by the employer as an independent contractor applies for workers' compensation benefits as an employee. Misclassification evaluations may also be triggered by:

- A random audit.
- Worker complaints.

### Utah State Tax Commission

Misclassification evaluations by the [Utah State Tax Commission](#) typically arise when a worker classified by the employer as an independent contractor applies for benefits or otherwise lists or represents that they are an employee to a state agency. Misclassification evaluations may also be triggered by:

- A random audit.
- Worker complaints.

#### **7. Please describe how aggressively independent contractor classification is enforced by each agency.**

In recent years, the [Utah Department of Workforce Services](#), [Utah Labor Commission](#), and [Utah State Tax Commission](#) have all become increasingly aggressive in enforcing correct worker classifications. It has also become increasingly difficult for employers to demonstrate that workers classified as independent contractors satisfy statutory standards for independent contractor status.

Utah was among seven states to enter into a memorandum of understanding with the US Department of Labor (DOL) in September 2011. The memorandum enables the DOL to share information and coordinate law enforcement with the Internal Revenue Service and the participating states, including Utah, to ensure that employees are not misclassified as independent contractors. (DOL: [Partnership Agreement Between the U.S. Department of Labor, Wage and Hour Division and Utah Labor Commission \(Sept. 19, 2011\)](#).)

### Avoiding Penalties for Misclassification

**8. For each independent contractor type, is there a safe harbor available for employers that unintentionally misclassify workers as independent contractors? If so, please describe it.**

### Employment Security Act: Utah Code §§ 35A-4-101 to 35A-4-508

The Utah Employment Security Act (UESA) allows an employer to rely on a previous declaratory order or ruling or final determination by the [Utah Department of Workforce Services](#) (DWS) classifying a worker or class of workers as independent contractors. If the DWS later determines that the individual is an employee, it may waive the employer's retroactive liability for contributions regarding wages paid to the individual before the date of the division's later determination. (Utah Code § 35A-4-204(4); Utah Admin. Code r. 994-204-401.)

A final determination only establishes whether the employer is liable to pay contributions on payments made to the workers in question. It does not affect the worker's right to challenge the determination at a more appropriate time, for example, when the work relationship has ended and the worker has filed a claim for benefits. The worker or class of workers is not bound by the determination if a worker later files a claim for unemployment benefits. (Utah Admin. Code r. 994-204-401.)

If a declaratory order or final audit finding concludes that a worker or class of workers are independent contractors, the employer will have no liability to pay unemployment contributions on payments made to the worker or workers except as provided in Utah Admin. Code r. 994-204-404 (Utah Admin. Code r. 994-204-403).

If a new determination by the DWS, an administrative law judge, or the Workforce Appeals Board holds that the status of a worker or class of workers is that of an employee under the UESA, the employer is liable to pay unemployment contributions on:

- All wages paid to workers in the class the individual belonged to, from the beginning of the calendar quarter in which the new determination is made.

- Any wages used by a claimant to establish any claim for benefits affected by the new determination.

(Utah Admin. Code r. 994-204-404.)

### **Workers' Compensation Act: Utah Code §§ 34A-2-101 to 34A-2-1005**

The Utah Workers' Compensation Act does not provide a safe harbor for employers who unintentionally misclassify workers.

### **Utah State Tax Commission**

The Utah State Tax Commission does not provide a safe harbor for employers who unintentionally misclassify workers.

**9. For each independent contractor type, can employers request a determination of worker status to assist them in determining whether to classify particular workers as independent contractors? If so, please describe:**

- How an employer would make the request.
- The process and timeframe for a response.
- The possible benefits and risks of making such a request.

### **Employment Security Act: Utah Code §§ 35A-4-101 to 35A-4-508**

A worker status determination can be made at the request of either an employer or the [Utah Department of Workforce Services](#) (DWS) as the result of an audit or status investigation. The procedure for issuing a safe haven determination varies depending on whether the status issue arises out of:

- An audit or request for declaratory order and there is no claim for benefits pending at the time.
- A claim for benefits and there has been a previous audit determination or declaratory order determining the status of the worker or a class of workers to which the individual belonged.

(Utah Admin. Code r. 994-204-402(1), (3).)

### **An Audit or Request for Declaratory Order**

The DWS determines status based on the best information available at the time. The DWS will deny a request for a

declaratory order if there is a pending benefits claim by a worker who would be affected by the order. A worker whose status is determined through an audit or declaratory order is not required to file a written consent to the determination. (Utah Admin. Code r. 994-204-402(1), (2).)

### **A Claim for Benefits**

The DWS will issue a notice as part of the monetary determination, denying use of the worker's independent contractor earnings as wage credits for the base period based on the previous status determination if both:

- The issue of a worker's status arises out of a claim for benefits.
- There has been a previous audit determination or declaratory order determining the status of the worker or class of workers the individual belonged to.

(Utah Admin. Code r. 994-204-402(3).)

A worker may protest a status determination by filing an appeal within 15 days of the date of the notice. After receiving a protest, the DWS reviews the worker's status. Based on its review, the DWS then issues a new determination that either affirms, reverses, or revises the original determination. The new determination is mailed to the parties and can be appealed by the employer or the worker as though it were an initial DWS determination as provided in Utah Admin. Code r. 994-508-101 through 994-508-104. (Utah Admin. Code r. 994-204-402(3).)

### **Workers' Compensation Act: Utah Code §§ 34A-2-101 to 34A-2-1005**

There is no procedure under which employers can request a determination of worker status.

### **Utah State Tax Commission**

There is no procedure under which employers can request a determination of worker status.

**10. Please describe the penalties for improper classification for each independent contractor type.**

### **Employment Security Act: Utah Code §§ 35A-4-101 to 35A-4-508**

The [Unemployment Insurance Division's](#) determination of whether a worker is an employee or independent contractor is the basis for contribution liability determinations (Utah Code § 35A-4-313).

Knowingly making a false statement under the Employment Security Act to avoid or reduce the obligation to pay unemployment compensation is a criminal offense. The degree of the offense depends on the total monetary value obtained or sought. (Utah Code § 76-8-1301(2).)

### Workers' Compensation Act: Utah Code §§ 34A-2-101 to 34A-2-1005

Workers' compensation insurance fraud is intentionally, knowingly, or recklessly misclassifying an employee as an independent contractor to avoid obtaining insurance coverage.

Workers' compensation insurance fraud is punishable by:

- Imprisonment up to 364 days, a fine up to \$2,500, or both, if:
  - the value of the property, money, or other thing of value sought is less than \$1,000; or
  - the number of individuals not covered is less than five.
- Imprisonment up to five years, a fine up to \$5,000, or both, if:
  - the value of the property, money, or other thing of value sought is between \$1,000 and \$5,000; or
  - the number of individuals not covered is between 5 and 50.
- Imprisonment between 1 and 15 years, a fine up to \$10,000, or both, if:
  - the value of the property, money, or other thing of value sought is \$5,000 or greater; or
  - the number of individuals not covered is 50 or greater.

(Utah Code §§ 34A-2-110, 76-3-203, 76-3-204, and 76-3-301.)

Additionally, employers who fail to comply with the Workers' Compensation Act may be liable in a civil action to their employees for:

- Damages suffered because of personal injuries arising out of or in the course of employment.
- Necessary costs.
- Reasonable attorneys' fees.

(Utah Code § 34A-2-207(1)(a), (4).)

### Utah State Tax Commission

There are no penalties for an improper classification. However, employers who misclassify workers may be liable for additional tax (see Question 3: Utah State Tax Commission).

## Other State-Specific Requirements

**11. Must independent contractor agreements include any particular language that is not required under federal law? If so, please insert that language and explain the requirement.**

### Model Utah Jury Instructions, Second Edition

Independent contractor agreements in Utah do not require inclusion of any particular language. However, the [Model Utah Jury Instructions, Second Edition](#) have provided an additional definition of independent contractor based on Supreme Court cases analyzing worker classification under the Workers' Compensation Act. Under these instructions, an independent contractor is one who:

- Has the right to control the manner and means of accomplishing the work.
- Does the work in their own way, subject only to minimal direction.
- Is responsible only for completing the job.

([Model Utah Jury Instructions, Instruction CV2814 \(2nd ed.\)](#).)

To determine whether an individual is an independent contractor, the key issue is whether the employer had the right to control the manner and means of accomplishing the work. If the employer:

- Does not have the right of control, then the individual is an independent contractor.
- Has the right of control, then the individual is not an independent contractor.

([Model Utah Jury Instructions, Instruction CV2814 \(2nd ed.\)](#).)

In determining whether the employer has the right of control, Utah courts weigh the following factors:

- Agreements between the parties about who had the right of control.

- The right to hire and fire.
- The method of payment.
- Who actually directed the work.
- Who furnished the equipment.

([Model Utah Jury Instructions, Instruction CV2814 \(2nd ed.\)](#);  
*Utah Home Fire Ins. Co. v. Manning*, 985 P.2d 243, 247  
(Utah 1999); *Harry L. Young & Sons*, 538 P.2d at 318.)

### 12. Please describe any other variance in how independent contractors in your jurisdiction are treated compared to under federal law.

There are no other variances in how independent contractors in Utah are treated as compared to under federal law.

### 13. Is there a state law specific to gig economies, including marketplace platforms and transportation network companies? If so, please summarize that law's requirements regarding the classification of gig economy workers.

Utah regulates the employment status of individuals who provide services to:

- Transportation network companies (TNCs).
- Service marketplace platforms (SMPs).
- Remote service marketplace platforms (RSMPs).

## Transportation Network Companies

A TNC is an entity that:

- Uses a software application to connect a passenger to a transportation network driver providing transportation network services.
- Is not:
  - a taxicab under Utah Code § 53-3-102; or
  - a motor carrier under Utah Code § 72-9-102.
- With certain exceptions, does not own, control, operate, or manage the vehicle used to provide the transportation network services.

(Utah Code § 13-51-102(4).)

Under Utah law, a TNC driver is an independent contractor of a TNC and not an employee (Utah Code § 13-51-103(2)(a)).

The [Division of Consumer Protection](#) administers and enforces Utah's TNC law (Utah Code §§ 13-51-102(1) and 13-51-104).

## Service Marketplace Platforms

Under Utah's Service Marketplace Platforms Act (SMPA), a SMP is an entity that:

- Uses an internet-connected software platform, including a mobile application:
  - to connect building service contractors with customers seeking a building service; and
  - through which a customer may request a building service.
- Charges a building service contractor a fee to use the software platform.

(Utah Code § 34-53-102(3).)

Building services under the SMPA:

- Include services for:
  - cleaning or janitorial work;
  - furniture delivery, assembly, moving, or installation;
  - landscaping;
  - home repair; or
  - other similar services.
- Do not exceed \$3,000 in charges.

(Utah Code § 34-53-102(1).)

Under the SMPA, building service contractors may be either independent contractors or employees of the service marketplace platform. The law presumes that a building service contractor is an independent contractor unless there is clear and convincing evidence that the parties intended an employer-employee relationship. (Utah Code § 34-53-201.)

## Remote Service Marketplace Platforms

Utah adopted the Remote Service Marketplace Platforms Act (RSMPA) effective May 5, 2021. Under the RSMPA, a RSMP both:

- Offers a digital application to the public.
- Accepts remote service requests exclusively through the digital application.

(Utah Code § 34-53a-102(2).)



## Independent Contractors: Utah

The RSMPA defines remote services as services that a remote service contractor performs for another person through the marketplace company's digital application, including:

- Tutoring.
- Closed captioning.
- Open captioning.
- Subtitling.
- Transcribing.
- Translating.
- Interpreting.
- Conducting language assessments remotely through the digital application.

(Utah Code § 34-53a-102(3).)

Under the RSMPA, remote service contractors are independent contractors, not employees of a marketplace company, if under the parties' contract and in fact:

- All or substantially all of the remote service contractor's work under the contract is:
  - on a per-job or per-transaction basis; and
  - paid on an hourly, per-job, or per-transaction basis.

- The marketplace company does not:
  - set specific hours the remote service contractor must be available to accept remote service requests;
  - set a specific location where the remote service contractor must be available to perform remote services; or
  - restrict the remote service contractor from engaging in another occupation or business.
- The remote service contractor is responsible for providing necessary tools, materials, and equipment to perform remote services, other than the marketplace company's digital application.

(Utah Code § 34-53a-201(1).)

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