

# Shunneson Law Offices

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## Illinois Workers Compensation Independent Contractor Determination

Under the Workers Compensation Act, an independent contractor is not an employee and, therefore, is not entitled to benefits. [Bauer v. Industrial Commission, 282 N.E.2d 448 \(1972\)](#)). Often an employer will try to avoid paying your workers' compensation benefits by trying to classify you as an independent contractor, pay you as a "1099" employee for tax purposes, and tell you that you are an independent contractor and not entitled to employee benefits, such as workers compensation benefits. Accordingly, determining whether you are an independent contractor or an employee is important when your employer denies Workers' Compensation coverage on the basis you are an "independent contractor."

Initially, it should be noted that just because an employer calls you an "independent contractor," and pays you as a 1099 employee, that does not mean that a Court (the Workers Compensation Commission) will agree. The [Workers Compensation Commission](#) does not care what you or your employer believed the relationship to be and will determine whether you are an independent contractor only after it reviews all the facts. [Ware v. Industrial Commission, 318 Ill.App.3d 1117, 743 N.E.2d 579 at 583, 252 Ill.Dec. 711 \(1st Dist. 2000\)](#). In fact, no rigid rule of law exists regarding whether a worker is an employee or an independent contractor. [Ware v. Industrial Commission, 318 Ill.App.3d 1117, 743 N.E.2d 579 at 583, 252 Ill.Dec. 711 \(1st Dist. 2000\)](#). In this regard, the Commission looks at a number of factors to determine if someone is an employee or an independent contractor under the Act. Of all of the factors though, the most crucial factor ["remains the degree of control which respondent \(your employer\) exerts over the means by which claimant \(you\) completes his tasks."](#) [Lowe v. Industrial Commission, 507 N.E.2d 881 \(4th Dist. 1987\)](#). The Courts reason that ["the right to control the work is perhaps the most important](#)

single factor in determining the relation . . . inasmuch as an employee is at all times subject to the control and supervision of his employer, whereas an independent contractor represents the will of the owner only as to the result and not as to the means by which it was accomplished.” Romondo v. Industrial Commission, 525 N.E.2d 1005 (1st Dist. 1988).

As a general rule, this means that, the more “control” your employer has over how, when, where, what you do, and what tools you use to perform the job, and who you co-workers are, then the more likely you are going to be found to be an employee. Some factors that mitigate against a finding would be your control over your own hours, how you perform the job, and what tools/clothes are used in completing the job.

It should be noted that the courts have given increased significance to the nature of the work performed in relation to the general business of the employer, which is known as the “Larson theory,” but this is not controlling in Illinois. See Ware v. Industrial Commission, 318 Ill.App.3d 1117, 743 N.E.2d 579 at 583, 252 Ill.Dec. 711 (1st Dist. 2000).

Some other factors include:

Setting of the schedule, schedule work, setting quotas or time requirements;

Setting work locations, regular reporting locations, requiring work at regular intervals;

The right of the employer to discharge the worker;

Ability to work for other companies;

The method of payment, amount of wages, including the withholding of taxes;

Supplying training/instruction, tools, supplies, materials, equipment and needed instrumentalities;

Requiring a uniform;

The level of skill required to perform the work, independent trade, occupation, profession, or business;

Labels the parties place on their relationship and any contracts with the employer

Nature of the work/type of work performed and the general business of the employer; See e.g. *Skzubel v. Illinois Workers Compensation Commission*, 927 N.E. 2d 1247 (1st Dist. 2010).

Of course, this list is not a complete, and exclusive, list of factors that can be considered and one factor that is important in one case may not be in another. Further, just because you meet one of the factors, does not mean that you are an employee. The determination is based on a “totality of the circumstances.” For example, even though a physician may be a highly skilled worker, if he or she is under contract that prohibits him or her from working for any other physicians or hospitals the employer works with, must see all his or her patients in the hospital, and must refer all his or her surgical patients to the hospital, then it is likely the physician worker will be found to be an employee. Further, even though a cabbie or truck driver may lease his cab or truck from a company, and has his “own” company, a driver may still be an employee under the Act. [See \*Yellow Cab Co. v. Industrial Commission of Illinois\*, 238 Ill.App.3d 650, 606 N.E.2d 523, 179 Ill.Dec. 691 \(1st Dist. 1992\).](#)

If you believe you have been wrongly denied benefits by being labeled as an independent contractor, we highly recommend a consultation with an [experienced workers’ compensation lawyer](#).

If you, or a loved one, has been injured at work, then you need information about your rights. At [Shunneson Law Office](#), I am devoted to demanding an insurance company cover your injuries following accidents. Call (847) 693-9120 for more information or [contact us](#) to schedule a consultation. Located in Lake County, Illinois, with meeting locations throughout Chicago, we have the ability to meet with you at any convenient Chicagoland location from 9:00 a.m. to 5:00 p.m., Monday – Friday. However, evening and weekend appointments are available upon request by calling 847.693.9120.

-Drake Shunneson (copyright 2012)

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knowledge of workers compensation law in writing this article, as well as many articles, books, statutes, regulatory rules, treatises, and internet sources, some of the ideas and material for this article were obtained from the [Illinois Institute for Continuing Legal Education's](#) Illinois Workers' Compensation Practice Guide (2011), which deserves special recognition.