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OLSI BUSINESS LEGAL GUIDE · FLORIDA SMALL BUSINESSES

Independent Contractor or Employee in Florida

Getting worker classification wrong is among the costliest mistakes a Florida small business can make — because four legal tests apply at once and the federal rules are shifting in 2026. This guide walks all four tests, the current DOL rule status, misclassification penalties, Section 530 and VCSP relief, and how to write an IC agreement that holds up.

JURISDICTION Florida	AUDIENCE Small Business Owners & Founders	LAST REVIEWED July 2026
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WHAT THIS GUIDE COVERS

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IMPORTANT — PLEASE READ

Open Law Services Institute is not a law firm and does not provide legal advice. This guide gives general legal information to help you understand how to classify workers as independent contractors or employees under Florida and federal law. It cannot tell you what to do in your specific situation, and using it does not create an attorney–client relationship. For advice about your situation, consult a Florida-licensed attorney. Learn more at www.openlawservices.org.

START HERE

Classification is a high-stakes, four-part question

Calling a worker a “1099 contractor” does not make it so — and if you are wrong, four different agencies can come after you for the same mistake.

Whether a worker is an **employee** or an **independent contractor** is not one question with one answer. Four separate legal tests apply *at the same time* — the **IRS** test, the **FLSA** economic-reality test, the Florida **workers’ compensation** test, and the Florida **reemployment tax** test — and a worker can come out an independent contractor under one and an employee under another. Get it wrong and you face back taxes, back wages, doubled damages, five-figure state penalties, and personal liability. This guide walks every test and shows you how to classify defensibly.

WATCH OUT · THE LABEL ON THE CONTRACT DOESN'T DECIDE IT

The U.S. Supreme Court said it plainly: “putting on an ‘independent contractor’ label” does not remove a worker from the law’s protection.¹¹ Florida agrees — classification turns on the **reality** of the relationship, not what your paperwork calls it.¹ A signed IC agreement helps, but it cannot save a relationship that functions like employment.

What this guide covers

The four tests and how they differ; the fast-moving federal rules in 2026; what misclassification actually costs; the Section 530 and VCSP relief programs; and how to structure and document a genuine contractor relationship.

THE FRAMEWORK

The four tests that apply at once

This is the core idea to internalize: one worker, four tests, potentially different answers. You must satisfy all four.

1 IRS common-law test

For federal employment taxes (FICA, FUTA, withholding). Right-of-control analysis grouped into behavioral control, financial control, and type of relationship.⁶⁷

2 FLSA economic-reality test

For federal minimum wage and overtime. Six factors asking whether the worker is economically dependent on you or genuinely in business for themselves.¹⁰

3 Florida workers’ comp test

Chapter 440’s 4-of-6 criteria (non-construction), with far stricter rules for construction.¹⁶¹⁸

4 Florida reemployment tax test

Chapter 443 incorporates the common-law right-of-control test — a separate analysis that can reach a different result.²⁰

WHY THIS MATTERS IN PRACTICE

A worker could pass the workers'-comp 4-of-6 test yet still be an *employee* for reemployment tax under the common-law analysis²⁰ — or an independent contractor for the IRS yet an employee under the FLSA. Prudent classification means the worker looks like an independent contractor under **all four** tests, not just the one you happened to read about.

TIME-SENSITIVE

2026 alert: the federal rules are moving

The FLSA independent-contractor rule is in active flux. You need to know exactly where it stands — and to check before you rely on any version.

The **2024 rule** adopted a six-factor “totality-of-the-circumstances” test and remains the regulation on the books.¹² But in May 2025 the Department of Labor issued **Field Assistance Bulletin 2025-1** telling its investigators to **stop enforcing** the 2024 rule and revert to the earlier economic-reality analysis.¹³ Then, on **February 27, 2026**, DOL published a proposed rule to **rescind** the 2024 rule and re-adopt a streamlined, two-core-factor framework; the comment period closed April 28, 2026, but as of July 2026 the rescission is **not final**.¹⁴

WATCH OUT · PRIVATE PLAINTIFFS STILL USE THE 2024 RULE

DOL’s non-enforcement position does **not** bind courts or private plaintiffs. In a private FLSA misclassification lawsuit, the **2024 rule still applies**.¹² Until a final rescission is published, the safest course is to satisfy *both* the 2024 six-factor rule and the Eleventh Circuit’s economic-reality test¹⁰ — and to check **dol.gov** for the current status before you rely on any rule.

TEST #1 (FLORIDA)

Florida’s right-of-control test

Florida’s common-law test — used across many contexts — asks who controls the work, and it looks past the paperwork to the parties’ actual dealings.

In *Cantor v. Cochran*, the Florida Supreme Court adopted the **Restatement (Second) of Agency § 220** factors and held that status “depends **not on the statements of the parties** but upon all the circumstances of their dealings with each other.”¹ The ten factors weigh things like control over the details of the work, whether the worker runs a distinct business, who supplies the tools and workplace, the method of payment, and whether the work is part of the hirer’s regular business.²

Keith v. News & Sun-Sentinel refined this: courts look **first to the written agreement**, which controls **unless** other provisions or the parties’ **actual practice** show it is not a valid indicator of the true relationship.³ Recent applications include *McGillis* (ride-share drivers, on the facts, independent contractors)⁴ and *4139 Management* (control is a “primary indicator”).⁵

PRACTICE POINTER · CONTROL IS THE THROUGHLINE

Across all four tests, the recurring question is **control**: who decides *how* and *when* the work is done. The more you direct schedules, methods, and supervision, the more the worker looks like an employee. Genuine contractors control their own methods, set their own hours, and can work for others.

TEST #2 (FEDERAL TAX)

The IRS common-law test

For federal employment taxes, the IRS also applies a right-of-control test — organized into three modern categories.

Under Treasury regulations, the IRS uses the common-law right-of-control test for FICA, FUTA, and income-tax withholding.⁶ The old “20 factors” of Revenue Ruling 87-41 survive as an interpretive aid, now grouped into three buckets:⁷

B Behavioral control

Does the business control (or have the right to control) *how* the worker does the job — instructions, training, required procedures?

F Financial control

Does the worker have unreimbursed expenses, a real investment, an opportunity for profit or loss, and availability to the market? Are they paid by the job or by the hour?

R Type of relationship

Written contracts, employee-type benefits, permanency, and whether the services are a key, integral part of the business.

PRACTICE POINTER · FORM SS-8 IF YOU'RE UNSURE

Either the business or the worker can ask the IRS to formally determine status by filing **Form SS-8**.⁸ It is slow, and the IRS tends toward finding employee status, so use it for genuinely close calls rather than routine hires. Remember: employees get a **W-2**; independent contractors get a **1099-NEC**.

TEST #3 (FEDERAL WAGE)

The FLSA economic-reality test

For minimum wage and overtime, courts ask a different question: *is the worker in business for themselves, or economically dependent on you?*

The FLSA defines “employee” and “employ” sweepingly,⁹ and regardless of the DOL rulemaking, federal courts keep applying a judicial **economic-reality** test. The Eleventh Circuit — which governs Florida — uses the six *Scantland* factors:¹⁰ **(1)** the nature and degree of control; **(2)** the worker’s opportunity for profit or loss based on managerial skill; **(3)** the worker’s investment in equipment or materials; **(4)** whether the work requires special skill; **(5)** the permanence of the relationship; and **(6)** how integral the service is to the alleged employer’s business.¹⁰

Florida district courts apply *Scantland* consistently,³³ DOL's own current guidance follows the same economic-reality analysis,³⁴ and the Supreme Court's *Rutherford Food* rule — labels don't control — still anchors the analysis.¹¹

WATCH OUT · THE FLSA TEST SKEWS TOWARD EMPLOYEE

The economic-reality test is generally **broader** than the control tests — a worker can flunk it (i.e., be an employee) even where the IRS control factors look contractor-ish, especially where the work is integral to your business and the relationship is ongoing. This is where a lot of “permanent 1099” arrangements collapse.

TEST #4 (FLORIDA COMP)

Florida workers' comp: the 4-of-6 test

Chapter 440 has its own, concrete test — and a renumbering that trips up even lawyers relying on older citations.

First, a citation note: the workers'-comp “employee” definition was **renumbered** in 2023 — it is now **§ 440.02(18)** (formerly § 440.02(15)).¹⁵ For a **non-construction** worker to be an independent contractor, the individual generally must meet **at least four of these six** criteria:¹⁶

- I Separate business**
Maintains a separate business with its own facility, equipment, or materials.
- II Federal EIN**
Holds or has applied for a federal EIN (unless a sole proprietor not required to have one).
- III Paid to a business**
Receives compensation for services paid to a business, not to the individual.
- IV Business bank accounts**
Holds one or more bank accounts in the business's name.
- V Free to work for others**
Is free to perform work for other entities without an application process.
- VI Competitive-bid / per-task pay**
Receives compensation on a competitive-bid or per-task basis (unless the contract states an employment relationship).

If the 4-of-6 test is not met, a backup **seven-factor totality** analysis applies, and the **burden is on the individual** claiming independent-contractor status.¹⁷

TEST #4 (FLORIDA COMP)

Construction: the stricter rules

If the work is construction, throw out the ordinary thresholds — the rules are far tighter and the general contractor carries the risk.

The construction “employee” definition **sweeps in** subcontractors, sole proprietors, and partners engaged in construction unless they have valid coverage or a valid exemption.¹⁸ Coverage is required at **one or more** employees (versus four in non-construction),¹⁸ and a general contractor is **liable for the coverage** of a subcontractor’s employees.¹⁹ The only conclusive independent-contractor presumption in construction requires **both** a compliance affidavit **and** a valid policy or exemption — and on commercial projects of **\$250,000 or more**, sole-proprietor and partner exemptions do not apply.¹⁹

WATCH OUT · GCS INHERIT THEIR SUBS’ COMP GAPS

Because the general contractor is liable for a subcontractor’s uninsured employees,¹⁹ collect a current **certificate of insurance or exemption** from every sub *before* work starts, and verify it on the state’s Proof of Coverage database. An expired certificate can leave you paying for someone else’s injured worker.

TEST #4B (FLORIDA TAX)

Reemployment tax classification

Florida’s unemployment-tax system uses yet another lens — and it can reach a different answer than the workers’-comp test.

Chapter 443’s definition of “employment” incorporates the **common-law right-of-control test**.²⁰ That means a worker who qualifies as an independent contractor under the workers’-comp 4-of-6 test can still be an **employee** for reemployment-tax purposes under the *Cantor* Restatement analysis¹ — and vice versa. The two tests are genuinely independent.

PRACTICE POINTER · RECONCILE ALL FOUR BEFORE YOU HIRE

Before you engage someone as a contractor, run them through the IRS control test, the FLSA economic-reality test, the § 440.02(18) 4-of-6 test, and the Chapter 443 common-law test. If any one points to “employee,” treat that as a warning to either restructure the relationship or classify as an employee.

THE COST OF GETTING IT WRONG

What misclassification costs

The penalties stack across agencies, and some of them reach you personally — even through bankruptcy.

Federal back employment taxes. On reclassification you can owe back withholding, employee and employer FICA, and FUTA.²¹ Reduced rates under **§ 3509** apply for *unintentional* misclassification where you filed 1099s (higher rates if you didn’t; no relief for intentional misclassification).²² And the **Trust Fund Recovery Penalty** under § 6672 — **100%** of unpaid trust-fund taxes — can be assessed against any responsible person who willfully fails to pay over, and it **survives bankruptcy**.²³

100%Trust Fund Recovery Penalty on responsible persons²³**2×**workers'-comp penalty: twice the avoided premium²⁶**\$5,000**per employee for willful comp misclassification²⁶

Florida workers'-comp penalties add twice the avoided premium (or \$1,000, whichever is greater), **\$1,000 per day** for operating under a stop-work order, and up to **\$5,000 per misclassified employee** for willful misclassification.²⁶ Reemployment-tax assessments add yet another layer.

WATCH OUT · THIS LIABILITY IS PERSONAL AND STICKY

The Trust Fund Recovery Penalty pierces the entity to reach owners, officers, and bookkeepers who controlled the money — and unlike most business debts, it is **not dischargeable in bankruptcy**.²³ Misclassification is not a risk you can hide behind the LLC.

THE COST OF GETTING IT WRONG

Minimum wage and overtime exposure

If a “contractor” is really an employee, they were owed wage-and-hour protections all along — and the damages are doubled.

A misclassified employee can recover unpaid **minimum wage**, unpaid **overtime**, **liquidated (double) damages** equal to the unpaid wages absent a good-faith defense, and **mandatory attorney's fees** — with a two-year limitations period, three years for willful violations.²⁴ And Florida's minimum wage is well above the federal floor: **\$14.00/hour** as of September 30, 2025, rising to **\$15.00/hour** on September 30, 2026.²⁵

WATCH OUT · OVERTIME IS THE SILENT KILLER

Independent contractors are not owed overtime; employees are. Reclassify a “contractor” who worked 50-hour weeks and the unpaid overtime — **doubled**, plus the worker's attorney's fees²⁴ — can dwarf the tax bill. This is the most common way misclassification turns into a lawsuit.

REPORTING

The 1099-NEC threshold change

The dollar amount that triggers a 1099-NEC just changed — and it changes again by tax year.

Under the **One Big Beautiful Bill Act of 2025**, the Form 1099-NEC reporting threshold **rises from \$600 to \$2,000** for payments made **on or after January 1, 2026**, with inflation adjustments starting in 2027; the **\$600** threshold still applies to payments made in **2025 and earlier**.²⁷

WATCH OUT · NO 1099 ≠ NO TAX, AND NO 1099 ≠ CONTRACTOR

Two traps. First, **all income is taxable** whether or not a 1099 issues²⁷ — the threshold governs the paperwork, not the tax. Second, issuing a 1099 does not *make* someone a contractor; classification still turns on the four tests. Filing the right 1099s does, however, matter for Section 530 relief below.

RELIEF #1

Section 530 safe harbor

If you treated workers as contractors in good faith, a decades-old safe harbor can bar the IRS from reclassifying them retroactively.

Section 530 of the Revenue Act of 1978 prohibits retroactive IRS reclassification if you show three things: **(1) reporting consistency** (you filed all required 1099s), **(2) substantive consistency** (you treated all similar workers as contractors), and **(3) a reasonable basis** for doing so.²⁸ A reasonable basis can rest on judicial precedent, a prior clean audit, or a **long-standing industry practice** — and Congress specified that *no more than 25%* of the industry need follow the practice, and it need not span 10 years.²⁹

PRACTICE POINTER · 2025 MADE SECTION 530 STRONGER

In January 2025 the IRS issued **Rev. Rul. 2025-3** and **Rev. Proc. 2025-10** — the first comprehensive Section 530 update in 40 years. They clarify period-by-period consistency and, importantly, **shift the burden to the IRS** once you establish a prima facie case under one of the safe harbors and cooperate.³⁰ File your 1099s and treat like workers alike, and you preserve this protection.

RELIEF #2

The VCSP settlement program

If you realize you have been misclassifying and want to fix it going forward, the IRS offers a cheap, penalty-free reset.

The **Voluntary Classification Settlement Program (VCSP)** lets eligible employers **prospectively reclassify** workers as employees by filing **Form 8952**. Benefits: you pay only about **10%** of the § 3509(a) employment-tax liability for the most recent year, with **no interest or penalties** and no employment-tax audit of prior-year classification.³¹ Eligibility requires consistent past IC treatment, filed 1099s for the prior three years, and no current employment-tax audit.³¹

PRACTICE POINTER · FIX IT BEFORE THEY FIND IT

If an internal review shows you have been misclassifying, the VCSP is almost always cheaper than being caught — and it stops the meter running. Talk to a tax professional about whether you qualify, then file Form 8952 before an audit begins, because eligibility disappears once you are under examination.³¹

DOING IT RIGHT

Writing an IC agreement that holds up

A good contract cannot turn an employee into a contractor — but paired with the right practices, it is strong evidence of a genuine independent relationship.

Florida looks first to the written agreement, but the parties' **actual practice** controls when it contradicts the paper.³ *Verchick* shows the flip side: even W-2 forms didn't create employee status where the substance pointed the other way.³² So the agreement and the reality must **match**. A defensible arrangement typically includes:

- **Per-project or per-task payment** — not a fixed salary or hourly wage that looks like employment.
- **Contractor-supplied tools**, equipment, and workspace.
- **Freedom to work for others** and to control their own schedule and methods.
- An **EIN and business insurance** in the contractor's business name.
- A certification that the contractor **meets the § 440.02(18) criteria**.¹⁶
- No employee benefits, no mandatory training, no day-to-day supervision.

WATCH OUT · BEHAVIOR BEATS PAPERWORK EVERY TIME

If your contract says "independent contractor" but you set their hours, supply their laptop, require them to work only for you, and supervise their daily tasks, a court or agency will find an **employee** — label notwithstanding.¹¹³² The single best protection is to actually run the relationship like a contractor relationship.

BEFORE YOU CLASSIFY

A classification checklist

- I ran the worker through **all four** tests (IRS, FLSA, § 440.02(18), Chapter 443).
- I checked the **current DOL rule status** at dol.gov and can satisfy the operative test.
- The relationship reflects genuine **lack of control** over methods and schedule.
- For construction work, I collected a current **certificate of insurance or exemption** from every sub.
- Contractors are paid **per project**, use their own tools, and can work for others.
- Each contractor has an **EIN** and business insurance in the business's name.
- I file the correct **1099-NEC** (threshold \$600 pre-2026; \$2,000 for 2026+ payments).
- I treat **all similar workers consistently** to preserve Section 530 relief.
- My written IC agreement **matches** how the relationship actually operates.
- If I've been misclassifying, I've looked at the **VCSP** before any audit begins.

Where to find the law and the forms — for free

Florida Statutes Ch. 440, 443 — leg.state.fl.us/statutes

DOL misclassification (check rule status) — dol.gov

DOL Fact Sheet 13 — economic-reality test

IRS: contractor or employee? — irs.gov

IRS Form SS-8 (status determination) — irs.gov

IRS Section 530 relief — irs.gov

IRS Form 8952 (VCSP) — irs.gov

Florida Division of Workers' Compensation — myfloridacfo.com/division/wc

Verify workers'-comp coverage — apps8.fldfs.com/proofofcoverage

Free Florida & federal case law — [Google Scholar](https://scholar.google.com/)

PRACTICE POINTER · VERIFY BEFORE YOU RELY

The DOL rule, the 1099-NEC threshold, and Florida's minimum wage all changed in 2025–2026, and § 440.02 was renumbered in 2023. Confirm the current rule, statute, and threshold before acting. For more OLSI guides, visit www.openlawservices.org.

SOURCES & AUTHORITIES

Endnotes

Every legal proposition in this guide is grounded in the authorities below, cited in Bluebook form and verified against official Florida and federal sources as of July 2026.

1. *Cantor v. Cochran*, 184 So. 2d 173, 174–75 (Fla. 1966) (adopting Restatement (Second) of Agency § 220; status “depends not on the statements of the parties but upon all the circumstances of their dealings with each other”).
2. Restatement (Second) of Agency § 220 (the ten right-of-control factors Florida applies).
3. *Keith v. News & Sun-Sentinel Co.*, 667 So. 2d 167, 171 (Fla. 1995) (courts look first to the parties’ written agreement, which controls unless other provisions or the parties’ actual practice show it is not a valid indicator of status).
4. *McGillis v. Dep’t of Econ. Opportunity*, 210 So. 3d 220 (Fla. 3d DCA 2017) (applying the control test; ride-share drivers held independent contractors on the facts).
5. *4139 Mgmt., Inc. v. Dep’t of Labor & Emp’t Sec.*, 763 So. 2d 514, 517–18 (Fla. 5th DCA 2000) (control is a “primary indicator” of the relationship).

6. Treas. Reg. § 31.3121(d)-1 (IRS common-law right-of-control test for federal employment-tax purposes); 26 U.S.C. §§ 3121(d), 3306(i), 3401(c) (FICA, FUTA, and withholding definitions).
7. Rev. Rul. 87-41, 1987-1 C.B. 296 (the “20 factors,” now grouped into behavioral control, financial control, and type of relationship); IRS Pub. 15-A (2026).
8. IRS Form SS-8 (Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding) — either party may request an IRS determination.
9. 29 U.S.C. § 203(e), (g) (FLSA definitions of “employee” and “employ”).
10. *Scantland v. Jeffrey Knight, Inc.*, 721 F.3d 1308, 1311–12 (11th Cir. 2013) (the six-factor economic-reality test binding in Florida).
11. *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 729 (1947) (“putting on an ‘independent contractor’ label” does not remove a worker from the Act’s protection).
12. Employee or Independent Contractor Classification Under the Fair Labor Standards Act, 89 Fed. Reg. 1638 (Jan. 10, 2024) (the 2024 six-factor rule; codified at 29 C.F.R. pt. 795; effective March 11, 2024).
13. U.S. Dep’t of Labor, Wage & Hour Div., Field Assistance Bulletin No. 2025-1 (May 1, 2025) (WHD will not apply the 2024 rule in enforcement and will use the pre-2024 economic-reality analysis of Fact Sheet 13).
14. Employee or Independent Contractor Status Under the FLSA, FMLA, and MSPA, 91 Fed. Reg. 9932 (Feb. 27, 2026) (NPRM, WHD-2026-0001, proposing to rescind the 2024 rule; comment period closed April 28, 2026; not final as of July 2026).
15. § 440.02(18), Fla. Stat. (2025) (definition of “employee,” renumbered from former § 440.02(15) by ch. 2023-8, § 95, Laws of Fla.).
16. § 440.02(18)(d)1.a., Fla. Stat. (2025) (the 4-of-6 criteria for a non-construction independent contractor: separate business; federal EIN; compensation to a business; business bank accounts; freedom to work for others; and competitive-bid or per-task pay).
17. § 440.02(18)(d)1.b.–c., Fla. Stat. (2025) (backup 7-factor totality analysis if the 4-of-6 test is not met; burden on the person claiming independent-contractor status).
18. § 440.02(18)(c), Fla. Stat. (2025) (construction “employee” definition sweeps in subcontractors and sole proprietors absent valid coverage or exemption); § 440.02(20)(b)2 (construction coverage threshold of one or more employees).
19. § 440.10(1)(b), Fla. Stat. (2025) (a general contractor is liable for coverage of a subcontractor’s employees); § 440.10(1)(g) (conclusive independent-contractor presumption in construction requires *both* a compliance affidavit and a valid policy or exemption); § 440.02(18)(c)2 (on commercial projects of \$250,000 or more, sole-proprietor/partner exemptions do not apply).
20. §§ 443.036(21), 443.1215, 443.1216(1)(a), Fla. Stat. (2025) (reemployment-tax “employment” incorporates the common-law right-of-control test — so a worker can be an independent contractor for workers’ comp yet an employee for reemployment tax, or vice versa).
21. 26 U.S.C. §§ 3402, 3102, 3111, 3301 (back withholding, employee and employer FICA, and FUTA on reclassification).
22. 26 U.S.C. § 3509(a)–(c) (reduced assessment rates for unintentional misclassification where Forms 1099 were filed; higher rates if not filed; no relief for intentional misclassification).
23. 26 U.S.C. § 6672 (Trust Fund Recovery Penalty — 100% of unpaid trust-fund taxes assessable against a responsible person who willfully fails to collect or pay over; survives bankruptcy discharge).

SOURCES & AUTHORITIES (CONTINUED)

Endnotes

1. 29 U.S.C. §§ 206(a), 207(a), 216(b) (federal minimum wage, overtime, and remedies including liquidated damages and attorney’s fees); 29 U.S.C. § 255(a) (two-year limitations period, three for willful violations).
2. Fla. Const. art. X, § 24 (Florida minimum wage); Fla. Dep’t of Commerce (minimum wage is \$14.00/hour effective September 30, 2025, and rises to \$15.00/hour effective September 30, 2026).
3. § 440.107(7)(d)1., Fla. Stat. (2025) (workers’-comp penalty of twice the avoided premium or \$1,000, whichever is greater); § 440.107(7)(c) (\$1,000/day for operating under a stop-work order); § 440.10(1)(f) (up to \$5,000 per misclassified employee).
4. One Big Beautiful Bill Act of 2025, Pub. L. No. 119-21, § 70433 (raising the Form 1099-NEC reporting threshold from \$600 to \$2,000 for payments made on or after January 1, 2026, with inflation adjustments beginning 2027); 26 U.S.C. §§ 6041(a), 6041A(a) (\$600 threshold for pre-2026 payments). All income remains taxable regardless of whether a 1099 issues.
5. Revenue Act of 1978, Pub. L. No. 95-600, § 530, as amended (safe harbor barring retroactive IRS reclassification where the taxpayer shows reporting consistency, substantive consistency, and a reasonable basis).
6. § 530(e)(2)(B), Revenue Act of 1978 (industry-practice reasonable basis; no requirement that more than 25% of the industry follow the practice, nor that the practice span 10 years).

7. Rev. Rul. 2025-3 and Rev. Proc. 2025-10 (Jan. 2025) (first comprehensive Section 530 update in 40 years, superseding Rev. Proc. 85-18; clarifying period-by-period consistency and shifting the burden to the IRS once the taxpayer makes a prima facie case and cooperates).
8. IRS Announcement 2011-64, 2011-41 I.R.B. 503, *expanded by* Ann. 2012-45, 2012-51 I.R.B. 724 (Voluntary Classification Settlement Program); IRS Form 8952 (application filed at least 60 days before the requested effective date; pay approximately 10% of the § 3509(a) liability for the most recent year, with no interest or penalties).
9. *Verchick v. Hecht Invs., Ltd.*, 924 So. 2d 944 (Fla. 2d DCA 2006) (W-2 forms in the worker's name did not, standing alone, create a triable issue where substantial evidence contradicted employee status — substance controls over labels).
10. *Antenor v. D & S Farms*, 88 F.3d 925 (11th Cir. 1996); *Aimable v. Long & Scott Farms, Inc.*, 20 F.3d 434 (11th Cir. 1994) (applying the economic-reality factors in the Eleventh Circuit).
11. U.S. Dep't of Labor, Fact Sheet 13, *Employment Relationship Under the Fair Labor Standards Act*, dol.gov/agencies/whd/fact-sheets/13-flsa-employment-relationship (visited July 2026).

A note on citations: statutes, rules, fees, and agency positions are periodically amended — several authorities cited here changed between 2023 and 2026 — so always confirm the current text of any statute, rule, or case, and the current fee or form, before relying on it.