



Independent Contractor (1099) vs. Employee (W2)

Often instructors and consultants prefer to be classified and paid as an Independent Contractors instead of being hired as an employee and being paid through the company payroll. This is not a decision that can be made simply because of the preference of the person or the club. There are important legal differences. Employment status has tax implications, affects employment benefits, and affects liability. For example, employees are covered by BJL workers compensation and general liability insurance; Independent Contractors must provide proof they have their own.

The keys to making the determination are to look at the entire relationship and consider the extent of the right to direct and control the worker. Some questions to consider:

- What is the definition of the role?
- Will the person be a “consultant/advisor” or actually be performing the work?
- Is the person self-employed now?

IRS Common Law Rules

Facts that provide evidence of the degree of control and independence fall into three categories:

1. **Behavioral:** Does the club control or have the right to control what the worker does and how the worker does his or her job? Does the club tell the worker when or how to work or require the worker to wear a uniform, including club logo or nametag?
2. **Financial:** Are the business aspects of the worker’s job controlled by the payer? (These include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.) Does the worker stand to lose money? Is the worker reliant on this one assignment?
3. **Type of Relationship:** Are there written contracts or employee type benefits (i.e., benefits, insurance, paid time off, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

The answers to these questions do not guarantee a classification. Circumstances vary and should be considered on a case-by-case basis.

Below is another way to consider the requirements.

Independent Contractors:

- have an established business
- may have their own advertisements
- have their own insurance
- set their own schedules
- set their own rate of pay
- have the freedom to refuse work offers.

Here are some BJJ policies to consider before engaging an Independent Contractor (IC):

- IC's own their own business. They should be responsible for their own decisions, and don't take direction from BJJ or the club other than us "hiring" them for their services but they don't perform the job functions of the club.
- IC's carry all necessary Liability and Workers Comp insurance and need to provide a copy of their insurance certificates.
- IC's are responsible for all their business taxes.
- BJJ associates cannot report to an IC. An IC should not direct BJJ employees and should not create their schedules or approve their timecards.
- IC's will not need and will not have access to Paycom ESS or Client.
- IC's can't have club or BJJ e-mail addresses.
- IC's cannot be required to wear BJJ or club logoed attire.
- BJJ and the club can provide IC's access to Scheduling systems that members sign up for (i.e. court reservations) and they can have access to print while onsite.
- IC's should not be reimbursed for their supplies. This is part of their business expense.
- IC's don't receive free meals, employee perks, or anything else that a BJJ associate would normally receive.
- IC's are not paid through BJJ payroll. They are paid by Accounting as a vendor. They must provide a completed W9 and submit invoices.
- IC's do not receive an offer letter of employment from BJJ or the club.

Document each of the factors used in coming up with the determination of Independent Contractor. Contact BJJ HR for confirmation and contract review, if needed.

***These are general guidelines. IRS regulations and laws are subject to change.
Please contact BJJ HR for confirmation of proper classification.***