

Employees Vs. Independent Contractors

As your business grows you may ask, “Should I hire full or part-time employees or should I hire subcontractors to perform specific jobs on an as-needed basis?” If you hire contract labor, your paperwork is much easier. However, just calling someone contract labor doesn’t make him/her so. If you incorrectly classify those working for you, you may end up paying substantial penalties and back taxes to the IRS and the State of Colorado.



Most individuals who work for you will be considered either common law employees or independent contractors. Unfortunately, there are many state and federal laws that are used to define an employment relationship and to determine whether an individual who performs services for you is an “employee” or an “independent contractor.” Publication 15-A, “Employer’s Supplemental Tax Guide,” has more information on determining whether an individual is an independent contractor or an employee.

Common Law Employees

Common law employees are individuals

who perform services subject to the control of an employer regarding what, where, when and how something must be done. The actual working relationship between an individual and a business is more important than the title (employee, subcontractor, day laborer, etc.) when determining if someone is a common law employee. It does not matter that the employer gives the employee substantial discretion and freedom to act, so long as the employer has the legal right to control both the method and results of service. You will file a W-2 at the end of the year to report wage and tax withholdings.

Independent Contractors

Persons who follow a trade, business or profession such as lawyers, accountants or construction contractors who offer their services to the general public are usually considered independent contractors. The key characteristic of an independent contractor is the worker’s “independence.” An independent contractor relationship is a business-to-business relationship. It is **NOT** a business to individual relationship. You will need to file a 1099 with the IRS at the end of the year to report the payments made to each contractor that is not a corporation. The IRS uses a list of factors to determine whether a worker is a common law employee or an independent contractor. The Colorado Unemployment Insurance Liability Unit and the Colorado Division of Workers’ Compensation use nine criteria established by state law (8-40-202 and 8-70-115, C.R.S.) to determine whether a worker is a common law employee or an independent contractor. As a general rule, any individual who performs services for pay for another is deemed to be an employee, unless it is shown that the worker is free from control and direction in the performance of the services and is customarily engaged in an independent trade, occupation, or business related to the service performed. The burden of proof is on the employer to show that the foregoing two tests are met. The employer may create a rebuttable presumption of an independent contractor relationship with a worker.

Use a Written Document or Contract that is:

- Signed by both parties,

- Clearly discloses, in larger font, boldface or underline type, that the independent contractor is not entitled to unemployment insurance or workers’ compensation insurance, and
- States that the independent contractor is obligated to pay all federal and state income taxes on any money earned pursuant to the contract.

The Contract also provides that the person for whom the services are performed **does not:**

- Require the individual to work exclusively for the person for whom services are performed; except that the individual may choose to work exclusively for the said person for a finite period of time specified in the document
- Establish a quality standard for the individual; except that such person can provide plans and specifications regarding the work but cannot oversee the actual work or instruct the individual as to how the work will be performed.
- Pay a fixed or contract rate rather than a salary or hourly rate.
- Terminate the work during the contract period unless the individual violates the terms of the contract or fails to produce a result that meets the specifications of the contract.
- Provide more than minimal training for the individual employee.
- Provide tools or benefits to the individual, except that materials and equipment may be supplied.
- Dictate the time or performance; except that a completion schedule and a range of mutually agreeable work hours may be established.
- Pay the individual personally, but make checks payable to the trade or business name of the individual.
- Combine his/her business operations in any way with the individual’s business, but instead maintains such operations as separate and distinct.

The criteria stated above, along with other factors, form a basis for how the State distinguishes between employees and independent contractors. No one factor or

criterion is by itself conclusive evidence that an individual worker is an employee or an independent contractor.

The following is a summary of the reasoning used by the Colorado Courts in deciding unemployment insurance cases on the independent contractor vs. covered employee issue. Please note that this summary should not be considered a substitute for legal advice.

The question of control is related to general control and is not concerned with the fact that the worker can exercise his/her own judgment in performing the detail of the work. Control refers to the right to control and not to the actual control used by the company. The possibility of future control can be used in determining if an individual is free from control and direction. The power to terminate a contract for personal service at any time without liability is a strong indication of control. The right to terminate services at any time involves the right to control. This factor, in addition to the fact that the worker is required to use the material furnished by the company and meet the quality control standard of the company, is usually sufficient to establish control. Other factors that may be considered indicators of control are: the worker reports on a daily basis, the worker is provided with an outline of procedures, and the worker is obligated to keep records or uses the name of the company.

Even though the company retains no right to control the performance of the worker, the worker must be customarily engaged in an independent business related to the service performed. The worker is not customarily engaged in an independent trade, occupation, profession or business related to the service performed if the worker devotes his/her whole time to performing duties for one company, is not engaged in any other work and performs the service within the usual course of business of the company. A company contesting liability for unemployment compensation taxes under independent professional exception is required to prove not only that a worker is customarily established and engaged in an independent business, but also that the independent business is related to the services the worker is performing for the company and that the worker is engaged in the business venture at

the same time the worker is providing services for the company.

Even though a contract is framed to suggest existence of an independent contractor and not an employer/employee relationship, that fact alone does not create an independent contractor relationship. What is done under the contract is more significant than what the contract says. A company cannot circumvent the intended protection of the Colorado Employment Security Act by means of a contract that would place in jeopardy the security of employees.

The following is a summary of some criteria used by the IRS in determining whether a worker is an employee or independent contractor:

- An employee has no potential for suffering a monetary loss in connection with the work performed.
- An independent contractor can make a profit or suffer a loss in connection with the work performed.
- An employee works on the premises of the employer or on a route or location designated by the employer.
- An independent contractor may perform work at her/his own business premises.
- An employee performs services personally.
- An independent contractor may subcontract all or part of a work assignment.
- An employee may have assistants who are paid by the employer.
- An independent contractor hires, supervises and pays for his/her own assistants.

If a worker is a common law employee, the employer is responsible for state and federal income tax withholding, social security taxes (FICA) and state and federal unemployment insurance taxes. All common law employees must be covered by a workers' compensation insurance policy from the very beginning of employment. No distinction is made between different types of common law employees. Managers and supervisors are treated the same as line workers. There is no difference between full-time or part-time employees or employees hired for only a short period of time.

An independent contractor is responsible for his/her own self-employment taxes. If she/he has employees, she/he also has the obliga-

tion to comply with all employer responsibilities including workers' compensation insurance for his/her employees. If the independent contractor does not have and maintain workers' compensation insurance, the prime contractor is responsible for providing coverage. The prime contractor may recover from the independent contractor the cost of providing workers' compensation insurance to the independent contractor's employees.

If you are not sure whether your workers are employees or independent contractors, you should contact the IRS, the Colorado Division of Workers' Compensation and the Unemployment Insurance Tax Liability Unit of the Colorado Division of Employment and Training for a determination of an actual employer/employee relationship. Potentially, a worker could be considered an employee by one agency and an independent contractor by another. Form SS-8, "Determination of Employee Work Status for Purpose of Federal Employment Taxes and Income Tax Withholding," should be filed with the IRS. Form UITA-9, "Worker Relationship Questionnaire," should be filed with the Unemployment Insurance Liability Unit, (303) 318-9055 or 1-800-480-8299. You should contact the Division of Workers' Compensation, at 633 17th Street, Denver, CO 80202, (303) 318-8700, toll free at 1-888-390-7936, or www.coworkforce.com/dwc/ directly regarding your workers' compensation liability.

Special Employment Situations Commission and Piecework Employees

Commissioned delivery drivers, insurance agents, full-time commissioned sales agents of products for resale or for use in the buyer's business operation, and individuals who do piece work with materials supplied by the employer are considered statutory employees by the IRS. The employer is not required to withhold federal income tax from payments. However, if the contract states that an individual must perform the services personally, that the individual will perform the service on a continuing basis and that the employer will supply the equipment, then the payments are subject to FICA. Payments to commissioned delivery drivers and sales agents are subject to unemployment insurance tax. Because statutory

employees are similar in some respects to both common-law employees and independent contractors, you should contact the Colorado Division of Workers' Compensation directly regarding your workers' compensation liability, (303) 318-8700. To order W-2's and 1099's contact the IRS forms number at 1-800-829-3676.

Children and Spouses

If your business is a sole proprietorship, your children who work for you are not subject to FICA and Medicare taxes until age 18. If a child is paid for domestic work in the parent's home, wages are not subject to FICA and Medicare taxes until the child reaches age 21. Federal unemployment insurance taxes are not required for wages paid to children under the age of 21 who work for their parents. Whether a child can be claimed as a dependent on the parent's individual tax return is not considered. All wages paid to children may still be subject to income tax withholdings; use form W-4 and the appropriate tables to determine if income tax withholding applies. Wages paid by a sole proprietor to a spouse are subject to income tax withholding and social security taxes (FICA), but not to federal unemployment insurance taxes. All wages paid to a child or a spouse are subject to withholding taxes, FICA and state and federal unemployment insurance taxes if the parent/spouse's business is a partnership or a corporation, unless each partner is parent of this child. Workers' Compensation Insurance must be provided for family members/ employees.

Corporate Officers

Generally, working corporate officers are considered employees by the IRS and may not be paid through a distribution of dividends only. They must be paid a "reasonable wage or salary." All wages are subject to federal and state wage withholding, FICA, and unemployment insurance taxes. Corporate officers who own more than a ten percent share and who have a managing interest in the business may elect to reject workers' compensation coverage. These rules apply to the corporate officers in both C and S Corporations.

Churches and Charitable Organizations

The employees of charitable 501(c)(3) tax-exempt organizations may be subject to special exemptions. All wages paid to a common-law employee are subject to federal and state income tax withholdings. All wages are subject to social security tax unless wages are less than \$100 for an entire calendar year or are paid by a church or a church-controlled organization that opposes payment of social security taxes for religious reasons. 501(c)(3) tax-exempt organizations are exempt from payment of federal unemployment tax. All employees must be covered by workers' compensation insurance regardless of 501(c)(3) status.

Leased Employees

An alternative to hiring your own employees is to contract for workers from a temporary employment agency or an employee leasing agency. You pay the agency a fee to provide the number and type of employees you need and specify the conditions they must work under, but the individual workers remain employees of the agency. The agency is responsible for all payroll taxes, unemployment insurance, and workers' compensation. However, if a leasing company defaults in payment of unemployment insurance, the client company is then responsible for payment of unemployment insurance. A temporary agency is used when workers are needed for a short period of time. Leasing agencies provide employees under contract on a long-term basis. Please contact the Unemployment Insurance Liability Unit at (303) 318-9100, 1-800-480-8299 or www.coloradoworkforce.com

Household Employees

If you hire someone to work in your own home, you may have responsibilities as a household employer. If the employee earns over \$1,300 per year, you are responsible for social security and Medicare taxes. If the employee earns over \$1,000 during a quarter, you will also be responsible for unemployment insurance. The law does not require that you withhold federal or state income taxes for your employee. However, you may do so voluntarily if requested by your employee and he/she completes Form W-4. Workers' Compensation Insurance must be obtained for household em-

ployees who work 40 or more hours per week or 5 or more days per week. For additional information regarding your responsibilities as a household employer, call the IRS, 1-800-829-1040, and request Publication #926, "Employment Taxes for Household Employers."

Seasonal Employees

If you operate a seasonal business you may file a "Request for Seasonal Determination" with the Unemployment Insurance Liability Unit of the Department of Labor & Employment. A business that operates year-round and also hires seasonal employees may also file. Seasonal employer status will disqualify seasonal employees from collecting unemployment benefits during your off season. As a result, your unemployment experience rating will not be affected. However, if a seasonal employee is unemployed at the beginning of the next season, she/he will qualify to collect unemployment benefits at that time.

To qualify as a seasonal employer, your seasonal period may be no longer than 26 weeks per year and no more than 25% of your employees, in a seasonal occupation, may work longer than the 26-week period. There must be at least 45 consecutive days when you have no employees in the seasonal occupation. If your entire business operates less than 26 weeks per year, then all your employees automatically qualify as seasonal employees.

For example, if you employ seasonal groundskeepers and "regular" office workers, no more than 25% of all your groundskeepers may work outside your 26 week seasonal period; and, there must be a minimum 45 days when no groundskeepers are working. Your office workers may continue to work the whole year without impacting the status of your seasonal employees. The qualifications for seasonal employment are difficult to understand. If you have additional questions, please contact the Unemployment Insurance Liability Unit at (303) 318-9100 or 1-800-480-8299.

Tax Credits for Creating Jobs for Welfare Recipients

The state and federal government offer tax credits to businesses that offer employment to individuals receiving public assistance.

NOTE: The Welfare to Work Tax Credit has been extended to those employees who start work prior to January 1, 2002. Federal tax credits can and do change periodically. They may be enacted or extended as dictated by Congress and Executive Order. It is advised that you check with the IRS for any changes in credits you are interested in claiming. The State of Colorado allows employers to claim a credit of 20% of their annual costs for voluntarily providing “eligible services” for the employees who have received public assistance pursuant to the “Colorado Works Program,” 39-22- 521(1), CRS. “Eligible services” include assistance with childcare, health/dental insurance benefits, job training and transportation. The credit is limited to expenditures made on an eligible employee during the first two years of his/her employment.

For more information, contact the Colorado Department of Revenue and request FYI Income 34, “Colorado Works Program Credit,” (303) 238-SERV (7378). The Welfare-to-Work Tax Credit (WOTC) is a federal income tax credit that encourages employers to hire long-term welfare recipients who begin work prior to January 1, 2002. This “new” tax credit can reduce employer federal tax liability by as much as \$8,500 per new hire. To qualify, new employees must work at least 400 hours or 180 days and must be long-term welfare recipients (longer than 18 consecutive months). The tax credit is 35% of “qualified wages” during the first year of employment and 50% for the second year. Qualified wages are capped at \$10,000 per year but may include tax-exempt amounts under accident or health plans, as well as educational assistance and dependent assistance programs. An employer must apply for and receive certification from the state Welfare Opportunities Tax Credit (WOTC) coordinator that a new hire is a long-term AFDC or TANF recipient before the employer can claim the Welfare-to-Work

FINDING THE RIGHT PERSON

Once you have established your employment policies and procedures, you must clearly define the type of employee(s) you are seeking and their specific job responsibilities. Determine the lowest level of education, experience and skills you can accept. Be certain you know what skills are necessary to do the job. How much training are you willing to provide?

Each employment situation is unique. What may work for one business or even one specific job opportunity may not work for the next situation. Advertising in the local paper, registering with a trade organization or hiring an employment agency are all viable options in different situations. The Colorado Department of Labor and Employment administers more than 30 local Workforce Centers throughout Colorado. They help match the right employee with the right employer. See the Sources of Assistance chapter of this Guide for more information on the Workforce Center nearest you.

Federal and state civil rights laws prohibit discrimination in employment based upon race/color, creed/religion, national origin/ancestry, sex, age (over 40), and disability. Also prohibited is discrimination based on marriage to a co-worker (companies with 26 or more employees). Colorado law and the Americans with Disabilities Act (ADA) prohibit discrimination based on physical or mental disabilities. The Employer Responsibilities section contains additional information about state disability discrimination laws and the ADA, including the ADA Technical Assistance Information Center’s toll-free line, (800) 949-4232. They are located at 363 Sinton Road, Colorado Springs, CO 80907 and their website is www.adainformation.org

Your written application and interview are important tools in selecting the best applicant for the job. The Colorado Civil Rights Division has persons on duty daily to answer questions about all aspects of fair employment laws. It also publishes an informative brochure titled “Preventing Job Discrimination,” which is a useful guide to avoiding discriminatory questions during the hiring process. Contact the Division at (303) 894-2997, 1560 Broadway, #1050, Denver, CO 80202-5143, or by e-mail at ccrd@dora.state.co.us

Within the limits established by law, your goal is to find out as much as possible about each applicant including: education, professional background, work habits and skills, their interest in your position and their short and long-term goals. Ask questions about the applicant’s previous job and why they left. If you’re looking for someone who can work alone, does the applicant have the proper aptitude? If you’re looking for a “team player,” will the applicant complement the other members of the team? Evaluate the applicant’s responses, written and verbal. Are they evasive or contradictory? Do they have the necessary skills for the job? Are they prepared to give you the commitment you desire regarding such issues as overtime, weekend work, travel, etc.?

After the interview is over, encourage the applicant to keep in contact with you. Never commit yourself to a specific applicant until all applicants have been interviewed. Verify all information and references on the application. Request information in writing if you desire a written response. Now make your selection! Remember, the right employee will make you money. The wrong employee will cost you money, time, materials and even customers.

Tax Credit. Federal tax credits can and do change periodically. They may be enacted or extended as dictated by Congress and Executive Order. It is advised that you check with the IRS for any changes and credits you are interested in claiming.

To apply:

- Complete IRS Form 8850, “Pre- Screening Notice and Certification Request for Work

- Opportunity and Welfare-to-Work Tax Credits” by the date the job offer is made.
- Complete either U.S. Department of Labor ETA Form 9062, “Conditional Certification Form,” if provided to the job seeker by a participating agency or ETA Form 9061, Individual Characteristics Form,” if the job seeker has not been given a conditional certificate form.
- Mail the IRS Form 8550 and either ETA

Form 9062 or 9061 to the Colorado WOTC Coordinator within 21 days of new hire's start date. Contact the Colorado WOTC Coordinator at (303) 318-8829 or visit them at 633 17th Street, Suite 700, Denver, CO 80202. For more information and to obtain the necessary forms refer to the Welfare-to-Work website at <http://www.doleta.gov/>

Earned Income Tax Credit (EITC)

The EITC is a special tax benefit for working people who earn low or moderate incomes. Small business owners can benefit as it can provide support to their employees and make the positions in their company more attractive and manageable for former welfare recipients. Low-income employees whose annual incomes are less than certain amounts may qualify to receive EITC; for tax year 2003, earned income & modified adjusted gross income had to be less than: \$11,230 (no qualifying children; \$12,230 if married filing jointly) \$29,666 (one qualifying child) or; \$30,666 if married filing jointly) \$33,692 (more than one qualifying child; \$34,692 if married and filing jointly). The dollar amounts to qualify for EITC change annually. The EITC may be available to single workers between the ages of 25 and 65 with no children in the home. It may also be available to all workers, regardless of age, if there are children in the home. Workers who have at least one qualifying child in the home may be eligible to receive a portion of credit in their regular paycheck. Income guidelines and further information on qualification can be obtained by contacting the IRS at 1-800-829-1040, by ordering Publication 596, "Earned Income Tax Credit" (EITC) at 1-800-829-3676, or by visiting its website at www.irs.gov.

Advanced Earned Income Credit allows employees with at least one qualifying child to receive the credit throughout the year as part of their regular pay – AT NO ADDITIONAL COST TO THE EMPLOYER. To receive EITC advance payments employees must simply complete Form W-5. Advance payments don't cost employers money. Employers simply subtract the advance payments they have added to their workers' paychecks from the total taxes withheld from all employees they would otherwise

deposit with the IRS. Most employers with automated payroll systems can easily program advance payments into their systems. Although employers may not be aware of the advance EITC payment option, any eligible employee who files a W-5 with an employer must be given advance payments. Employers are NOT required to make sure employees are eligible for the EITC - that is the employee's responsibility. For more information, see the IRS Employer's Tax Guide, Circular E. It is available for free by calling 1-800-TAX-FORM.

Personnel Policies, Finding and Hiring Employees, Employee Regulations

Once you have determined that you will need employees in your business, you must invest the proper time and resources into establishing your personnel policies and finding the right people. You must also be aware of the federal and state regulations for employees.

Personnel Policies

While establishing written personnel policies may be time consuming, it can prevent significant aggravations and problems later. Your policy manual should address all the various issues you expect and don't expect to arise in the normal operations of your business – the good and the bad. However, written policies establish rights and responsibilities for your employees AND yourself. If you establish written policies, it is important that you follow them also, e.g. written warnings, review procedures, etc. Issues that may be addressed by personnel policies include:

- **Hours:** How many hours to be worked per day, per week? Discuss evening, weekends, holidays, peak periods, etc. Remember all employees except salaried supervisors are entitled to receive overtime. Determine how you will allow employees time off for personal needs. Establish clear procedures for paid and unpaid time off for emergencies, family illnesses, jury duty, etc. The Family and Medical Leave Act requires all employers with 50 employees or more to provide up to 12 weeks of unpaid leave for births, adoptions and health care

of immediate family members in a 12 month period.

- **Compensation:** Make your salaries competitive with similar local businesses. Wages are a significant cost in operating your business. However, low wages can result in higher turnover and lower productivity. Establish clear vacation policies. How long? When? Clearly define procedures for when two or more employees wish to go on vacation at the same time. Will you provide paid or unpaid vacations? Paid vacations are an expected basic benefit by many employees.

- **Fringe Benefits:** Consider offering your employees discounts, health insurance, pension plans, profit sharing and/or educational assistance. Fringe benefits can increase worker job satisfaction and productivity. If you provide benefits, which employee will receive them, e.g. all employees, only full-time employees, only management, etc.? You must have clear, written, non-discriminatory policies for all fringe benefits. See the Liabilities and Insurance chapter of this Guide for more information about health insurance. If your business requires skilled, professional employees and/or you desire to establish a long-term employment relationship, a pension plan and/or health insurance may be a requirement to achieve employee loyalty and commitment. If you offer a pension plan, it must meet the requirements of ERISA (Employee Retirement Income Security Act). General information on ERISA can be obtained from the U.S. Department of Labor, Pension and Welfare Benefits Administration, 2300 Main Street, Suite 1100, Kansas City, MO 64108, (816) 285-1800.

- **Grievances & Terminations:** Expect and plan for conflicts with your employees. Plan and establish grievance procedures. Outline your policy for probationary employment, period review, promotions and raises. Clearly document the steps to be used to resolve conflicts and then follow them and document your actions in writing. Establish clear policies for such matters as layoffs, seniority rights, severance pay, etc.

•**Non-competition Agreements:** Is your business involved in a very competitive environment or does it work on confidential research? Should key employees be required to sign legally enforceable non-competition agreements? Do you have all employee and independent contractors sign non-disclosure agreements relating to confidential information? Do you clearly state that any ideas and inventions developed by employees and independent contractors working for your company are the property of your company? An attorney liability should review your written personnel policies to determine enforceability, compliance with state and federal employment laws, and to ensure that they do not unduly increase your own. Each employee should receive a copy of your personnel policies upon hiring. Explain verbally any critical parts of your employment policies. Verify that each employee fully understands the document.

Employee Regulations

Once you have made your employee selection(s) you will need to familiarize yourself with the federal and state employee regulations. The Colorado Department of Labor and Employment regulates wages, hours and working conditions for employees.

- Minimum Wage:** Federal minimum wage is \$5.85 per hour beginning July 24, 2007 \$6.55 per hour beginning July 24, 2008 and \$7.25 per hour beginning July 24, 2009. Minimum wage must be paid all employees and emancipated minors whether employed on an hourly, piece-work, commission, time, task, training or other basis.
- Overtime Pay:** At least 1 1/2 times the employee's regular rate of pay must be paid for all hours worked over forty (40) in one workweek. In addition, State law requires overtime pay for any work after (12) consecutive hours. Any additional questions regarding work hours and overtime, please call or write the Colorado Division of Labor, Labor Standards Office, 633 17th

Street, 2nd Floor Denver, CO 80202 or call (303) 318-8441, 1-888-390-7936 outside of the Denver metro area or online www.coworforce.com

- Federal Law:** Pursuant to The Fair Labor Standards Act (FLSA) whenever both laws apply and FLSA differs with Colorado law, the law providing more protection or setting the higher standard applies.

The Internal Revenue Services Small Business Tax Education Program (STEP) is a cooperative effort with the local organizations to provide business tax education to the small business owner. Check into the IRS Small Business Tax Education Program in your area and take the first STEP to making your taxes less taxing! Assistance is only a phone call away. Just call 1-800-829-1040.

- Breaks:** Employees working in the following four industries: (1) retail and service, (2) commercial service, (3) food and beverage, and (4) health and medical, are covered by the work order 22 and shall be permitted breaks and meal periods during the workday. The law requires at least a 10-minute break every four hours (or a major fraction thereof). A half-hour meal period is required for any shift exceeding five hours.

- Penalty:** Failure to comply with Colorado Minimum Wage Order 22 is a misdemeanor and may be punishable by a fine or imprisonment.

For additional information and postings, write the Colorado Division of Labor, Labor Standards Office, 633 17th Street 2nd Floor, Denver, CO 80202 or call (303) 318-8441, 1-888-390-7936 outside of the Denver metro area or visit www.coworkforce.com.

Employer/Payroll Filing Requirements and Registration Applications

Form SS-4

You must have a federal employer identification number (FEIN) when you are an employer. You will use this number to make your federal tax deposits, and when you file your employment tax returns. You can obtain your

FEIN by: a) filing a completed SS-4 with the IRS EIN Operation center for your state and you'll receive your FEIN within four weeks; b) calling (800) 829-4933 Monday through Friday 7 AM to 10 PM for your time zone and you will receive your FEIN immediately; or c) faxing your SS-4 to FAX-TIN number for your state.

FAX-TIN is available 24 hours a day, seven days a week; be sure to include a cover sheet

showing your FAX # and you should receive your FEIN within four business days. There are other times when you must have a FEIN, such as when you have formed a corporation or a partnership. Your bank may also ask for an FEIN when you open a business bank account. If you are a sole proprietor, you are not required to have a FEIN.

The Colorado Business Registration Form, CR100

The CR100 is a multi-use form, which may be used to open a number of accounts. If you will have employees, this form will open your state wage withholding account with the Colorado Department of Revenue and your state unemployment insurance account with the Colorado Department of Labor and Employment. You may also use this form to obtain a state sales tax license.

INS Form I-9

One form that you must keep in your employees' personnel file(s) is the Immigration and Naturalization Services I-9 Form. This paperwork was devised to ensure that employers do not hire illegal aliens. The paperwork is not difficult and is required. The I-9 Form must be completed within three working days after employment begins. Employees must submit documentation that verifies residency to their

employer. All documentation unavailable on the hire date must be obtained within twenty-one days. The form lists a variety of different forms of identification that may be used individually or in combination to verify eligibility to work in the United States. The penalties for failing to comply with this requirement begin at \$250 for each unauthorized employee and can quickly reach \$10,000 per violation. For further information regarding the I-9 Form, contact the INS at 1-800-357-2099.

Form W-4

Each employee must date and sign a completed W-4, Employee’s Withholding Allowance Certificate. You should include it in every employee’s personnel file, as it will provide a record of his/her proper name, address, and social security number. The W-4 provides you with information regarding the employee’s marital status and the number of exemptions claimed to determine the proper federal and state income tax withholdings from your employee’s payroll checks. Maintaining this form on file is not only a requirement of the IRS but may also be used as evidence in disputes that arise with the IRS or employees. The W-4 must be filed with the IRS only in special circumstances, which is explained in Publication #15, Employer’s Tax Guide. If any of your employees claim exempt status, including students, they must fill out a new W-4 every year. Regular employees should fill out a new W-4 whenever they move or there is a change in their tax status, i.e., got married or divorced, increase/decrease dependents or changed the number of their exemptions. All employers in the State of Colorado must report a newly hired employee to the Division of Child Support Enforcement. A copy of the new employee’s W-4 or a new hire report must be sent to the State Directory of New Hires in Denver within 20 days of the employee’s date of hire or, at the option of the employer, on the first payroll after the 20 days have expired. This new report will be used to identify parents who are delinquent on child support payments. For more information on New Hire reporting, call the Colorado State Directory of New Hires at (303) 297-2849, (800) 696-1468 outside of the Denver metro area or online at www.newhire.state.co.us.

EMPLOYERS HAVE RIGHTS AND EMPLOYEES HAVE RIGHTS, TOO. KNOW THE MINIMUMS!

For information and postings contact the State of Colorado Department of Labor and Employment Labor Standards Office (303) 318-8441

Payroll Taxes – Filing Requirements and Forms

Wage Withholding and Social Security/Medicare Taxes

If you have employees, you will be responsible for withholding federal income taxes and Social Security/Medicare taxes from your employees’ wages. As the employer, you must pay an equal share of Social Security/Medicare taxes. Circular E, the federal “Employer’s Tax Guide,” is updated annually and should be used to determine the correct tax amounts. The amount of taxes withheld will determine how often you must deposit the taxes into your bank account. Deposits may be made at a Federal Deposit Bank, using Form 8109, or you may use the Electronic Federal Tax Payment System (EFTPS). EFTPS is similar to automatic bill payment. To get more information or to enroll in EFTPS, call the IRS at 1-800-555-4477 or 1-800-945-8400 or online at www.eftps.gov. Some employers are required to use EFTPS; you will be notified if this applies to you. At the end of each quarter, you must file Form 941 to report total wages paid, taxes withheld and due, and taxes deposited. If you have employees, you must withhold Colorado withholding tax from all employees working in Colorado, including non-residents. DR 1098, “Colorado Income Tax Withholding Tables,” should be used to determine the proper withholding rates for your employees. The state requires that once you have collected more than \$400 in state wage withholdings, you must file the total collected with the state when you file your next federal return. If at the end of a quarter you have still not collected \$400 in wage with-

ings, you must file with the state regardless of the amount due. If you annually withhold more than \$50,000 in state wage withholding, you must file via Electronic Funds Transfer (EFT). If you annually withhold less than \$50,000, you may elect to file via EFT or file coupon Form DR1094 with a check or money order.

Unemployment Insurance

Unemployment insurance is a fund established by law to provide benefits to employees who lose their jobs through no fault of their own. Several factors determine the amount of benefits that are paid every two weeks to eligible persons actively seeking employment. As an employer, you will be required to pay both state and federal unemployment insurance taxes. An employer must pay unemployment insurance tax on wages paid to all employees – including corporate officers. The federal unemployment insurance rate is 6.2% on the first \$7,000 in wages paid to each employee every year. However, as a new employer, you should qualify for a 5.4% credit for an effective rate of 0.8%. If your federal unemployment tax liability is over \$100 at the end of any quarter, you must make a deposit of the amount due. Use Form 8109 or the EFTPS system described earlier. If your liability is less than \$100, the liability may be carried over and added to the next quarter. At the end of the calendar year, you must file Form 940 or 940EZ to report your total unemployment tax liability for the year. If your liability at the end of the calendar year is less than \$100, you may deposit it or pay it with Form 940. Form 940 and your final unemployment tax payment are due by January 31. For more information and forms, contact the IRS at 1-800-829-1040 or 1-800-829-3676.

All Colorado employers must also pay state unemployment insurance tax. The first \$10,000 in wages paid to each employee during every calendar year is subject to state unemployment insurance tax. The current state unemployment insurance tax rate for new businesses is 1.7% plus a surcharge percentage. (NOTE: Some industries may pay a higher rate, e.g. construction trades.) You must file Form UETR-1, Unemployment Insurance Tax Report, and UETR-1(a), Unemployment Insurance Report of Workers Wages, every quarter regardless of

the amount of unemployment tax due. At the end of each year, you will receive notice of your tax rate for the next calendar year based on your business' unemployment claims history. If you purchase an existing business, you may acquire that business' experience rating and be liable for any delinquent unemployment insurance taxes. You may receive credit for taxes paid by the previous owner on employees during the current year. For more information on forms or optional reporting methods, contact the Department of Labor and Employment, Unemployment Insurance Tax Accounting Section at (303) 318-9100 or 1-800-480-8299.

Occupational Privilege Taxes

This is often referred to as the "head taxes" on individuals who work within the limits of certain cities. This tax is collected through employer and employee contributions. You must pay the employer a portion of the tax on yourself regardless of whether you are a sole proprietor, partnership or corporation. If your business is located within the limits of a city that requires this tax, you must set up an account through the city clerk's office. Make sure to find out about your city requirements. Contact your city clerk for more information.

Employee W-2's

At the end of the year, you are responsible for reporting wage and tax withholding information with the W-2 forms (Wage and Tax Statement). Copies of the W-2 must be sent to your employee no later than January 31. Copy A of Form W-2 must be sent to the Social Security Administration (SSA) by February 28 with Form W-3. If you file 250 or more form W-2's, you must file the information with the SSA via magnetic media. For your Colorado employees, you must file DR1093, Transmittal of State W-2's. If you file 250 or more form W-2s, you must report W-2 information to the state via magnetic media. Magnetic media includes magnetic tape and computer diskettes. For more information regarding magnetic media, contact the Colorado Department of Revenue at www.taxcolorado.state.co.us or (303) 205-8292 ext. 5252. To order W-2's call the IRS Forms number at 1-800-829-3676.

Businesses with more than \$200,000 of annual employment tax obligations have been required to make electronic payments since July 1, 1999. All businesses may be required to use the electronic system sometime in the future. For more information on EFTPS (Electronic Federal Tax Payment System), call the IRS at 1-800-555-4477 or 1-800-945-8400.

Independent Contractor 1099s

If you have determined that your workers are independent contractors, you are not required to withhold or pay any taxes on their behalf. However, you must keep track of how much you pay them and file Form 1099 Miscellaneous for each person to whom you paid \$600 or more during the year. The independent contractor must be sent her/his Form 1099s Miscellaneous by January 31. Copy A of Form 1099s must be sent to the IRS by February 28 with Form 1096 "Annual Summary and Transmittal of U.S. Information Return." If you file 250 or more Form 1099s you must file via magnetic media. To order 1099s call the IRS Forms number at 1-800-829-3676.

Payroll Records and Audits

It is important to keep complete and accurate employee/payroll records and to retain the records for at least five years. The IRS, the Immigration and Naturalization Service, the Colorado Department of Revenue and the Colorado Department of Labor & Employment all have the authority to audit your records. Remember, your responsibilities begin as soon as you hire an employee.

Workers' Compensation

Workers' Compensation is mandatory insurance that provides coverage for medical expenses and lost wages due to a job-related injury or occupational disease. The employer must pay the cost of coverage for employees. All employees must be covered beginning with the very first employee. Corporate officers and members of a Limited Liability Company who are compensated must be covered as an "S" corporation unless they own at least ten percent of the business and they formally elect in writing to reject coverage. The election to reject coverage is filed with the insurance carrier. If there are no other employees, the election

to reject coverage should be filed using Form WC43 with the Division of Workers' Compensation. According to state law, sole proprietors and partners in a partnership have the option of electing coverage for themselves, although a prime contractor may require it as a condition of a project contract. However, this election may significantly affect health insurance coverage. Carefully discuss this election with your insurance agent before making your decision. You can obtain workers' compensation insurance from an independent insurance.

Premium Cost

The cost of workers' compensation insurance coverage is based on units of \$100 of payroll. The rate per \$100 is based on the risk classification of your employees and your experience rate and is determined by your insurance carrier. At the beginning of the year and when you start your business, you will be required to estimate your payroll for the coming year. Your insurance carrier will require you to pay your premiums in advance similar to car or homeowner's insurance.

Premium Adjustments

At the end of each year, the actual payroll of your employees is determined either by audit or by completing a self-examination report. The actual cost of insurance is compared to the advanced premiums paid, and the difference will be charged or refunded to you. Some policies can be assigned a quarterly adjustment basis. This type of policy is normally limited to seasonal types of businesses, such as construction, where an annual estimate of payroll is difficult to determine. This policy will require a deposit based on a percentage of the annual premium. The deposit is held by the carrier for the life of the policy. Upon cancellation, the entire deposit is credited to your account. You are required

to report and pay premiums for actual wages paid each quarter.

Accident Reports

You must file an accident report with your insurance carrier within 10 days of a work-related accident. It is the injured employee’s responsibility to report the accident to you in writing within four days. If the employee is physically or mentally unable to provide notice, it is the responsibility of the immediate supervisor to submit written notice. Injured workers have two years to file claims for compensation with the Colorado Division of Workers’ Compensation.

Injured workers may receive medical and compensation benefits. Medical benefits include unlimited payment for all authorized medical, hospital, and surgical costs, prescriptions, medical apparatus and prosthetic devices. Compensation benefits include reimbursement of up to two-thirds of an employee’s lost average weekly wage for a specified period, a lump sum payment or both, based on the type of injury/disability.

Risk Management and Accident Prevention

Safety and accident prevention assistance is available from your insurance carrier. This service may include safety programs, cost control recommendations and a review of your accident and loss history. In addition, employers are encouraged to take part in the Colorado Division of Workers’ Compensation Premium Cost Containment Program. Employers who have had a qualifying cost containment program in place for one year may receive cost containment certification. Certification in this program can result in a reduction in premiums from up to 10 percent. As a new business, you should consider implementation of a cost containment program beginning with your very first employee. Contact the Division of Workers’ Compensation, Premium Cost Containment Program, 633 17th Street, Denver, CO 80202, (303) 318- 8700 for more information.

The Occupational Safety and Health Administration (OSHA)

The Occupational Safety and Health Administration (OSHA) is charged with the re-

sponsibility to:

- Develop mandatory job safety and health standards with “separate but dependent responsibilities and rights” for employers and employees
- Encourage and assist employers and employees to reduce workplace hazards and to implement/improve safety and health programs
- Establish training programs to increase the number of effective occupational safety and health programs and qualified personnel
- Conduct safety and health inspections at employer worksites
- Enforce OSHA standards and issue citations and fines as appropriate to ensure the safety and health of employees.

OSHA safety and health standards fall into four major categories – general industry, maritime, construction and agriculture. Standards are published in the Code of Federal Regulations (CFR), Title 29, Part 1900- 1999. Business owners should consult the CFR available at many public libraries and/or contact OSHA directly, 1999 Broadway, Suite 1690, Denver, CO 80202-5716, (303) 844-5285. Employers may ask OSHA for a variance from a standard or regulation if they can demonstrate that their workplace conditions and practices are at least as effective as those required by OSHA.

With the exception of some exempt industries, employers of 11 or more employees must maintain updated records of occupational injuries. Employers with 10 or fewer employees are exempt unless selected by the Bureau of Labor Statistics or OSHA. Small employers who are selected to maintain records will be notified in advance and supplied the necessary forms and instruction. Record keeping-exempt employers must still comply with all other OSHA Standards including the display of the OSHA poster, reporting within 8 hours an accident that results in one or more fatalities or the hospitalization of three or more employees.

OSHA has the authority to enforce safety and health standards and to conduct unannounced workplace inspections. “Upon presenting the appropriate credentials to the owner, operator or agent in charge” of a business, an OSHA compliance officer is authorized to

FOR MORE INFORMATION & ASSISTANCE

For more information regarding your employer responsibilities, call the following numbers:

Federal Payroll Taxes

1-800-829-1040

Colorado Wage Withholding

(303) 238-7378

Unemployment Insurance

(303) 318-9100
or 1-800-480-8299

Workers’ Compensation

(303) 318-8700 or
1-888-390-7936

OSHA

(303) 844-5285
1-800-321-6742

Civil Rights Division

(303) 894-2997
or 1-800-262-4845

Americans With Disabilities Act - Jobs Accommodation Network

1-800-526-7234

Department of Labor and Employment - Labor Standards

(303) 318-8441

New Hire Reporting

(303) 297-2849
1-800-696-1468

(SBAP) Small Business Assistance Program- Air and Environmental Assistance

(303) 692-3175

enter during regular working hours without delay, to inspect all areas where work is performed. Inspections must take place at "reasonable times and within reasonable limits." The inspection may include private interviews with the owner, operator and/or any employee. After the compliance officer completes his report, the area director determines what citations, if any, will be issued, and what penalties, if any, will be proposed.

Colorado State University (CSU) offers free OSHA consultation services. Program staff are experienced professional safety and industrial hygiene consultants trained to identify safety and health hazards in your workplace. They offer recommendations to reduce or eliminate hazards. Their purpose is to help businesses meet the OSHA job regulation standards and develop an ongoing, effective safety and health program. They will provide confidential, comprehensive written reports containing their findings and recommendations. Follow-up services are available as necessary. CSU consultants do not issue citation penalties for OSHA violations. Because the program is funded by OSHA, consultants are required to notify OSHA only in instances of refusal to correct serious violations within a reasonable amount of time. The primary aim is to assist responsible small employers in establishing safe and healthful working environments. For more information contact: Colorado State University, Occupational Health and Safety Section, 1681 Campus Delivery, Colorado State University, Fort Collins, CO 80523- 1681, (970) 491-6151 (telephone) or (970) 491-7778 (fax).

OSHA continuously strives to provide positive programs to help businesses comply with regulations and tries to avoid issuing citations and fines. Employers are encouraged to contact OSHA directly for the most up-to-date information regarding consultation services and voluntary compliance programs.

Employee "Right to Know" Laws

OSHA also enforces Employee "Right to Know" laws that apply to all businesses with employees such as contractors, manufacturers, or industrial processors who routinely work with hazardous chemicals. The law is intended to make sure that all hazardous and

EMPLOYER POSTING REQUIREMENTS

There are numerous state and federal posting requirements for employers. Some may only apply under certain circumstances, but several are required in all situations. Posters may be obtained free from the following agencies or may be purchased in combinations from many office supply companies.

<p>Anti-Discrimination Colorado Division of Civil Rights 1560 Broadway, Suite 1050 Denver, CO 80202 (303) 894-2997 1-800-262-4845 www.dora.state.co.us/civil-rights</p>	<p>Occupational Safety Occupation Safety & Health Administration (OSHA) 1391 Speer Blvd. Suite 210 Denver, CO 80204 (303) 844-5285 1-800-321-6742 http://www.osha.gov</p>
<p>Polygraph Protection Act, Federal Minimum Wage, Family & Medical Leave Act U.S. Dept. of Labor Wage-Hour Division 1999 Broadway Suite 2445 Denver, CO 80202 (720) 264-3250 http://www.dol.gov/elaws</p>	<p>Equal Employment Opportunity Equal Employment Opportunity Commission (EEOC) PO Box 12549 Cincinnati, OH 45312 1-800-669-3362 http://www.eeoc.gov/</p>
<p>State Minimum Wage Colorado Division of Labor Labor Standards Unit (303) 318-8441 www.coworkforce.com</p>	<p>Unemployment Insurance Division of Employment and Training (303) 318-9000 1-800-480-8299, State Wide Only www.coworkforce.com</p>

For Workers' Compensation Posters, contact your workers' compensation insurance carrier. You should prepare and post the following notice in 1/2 inch letters: "If injured on the job, written notice must be given to your employer within four working days of the accident, pursuant to section 8-43-102(1) CRS."

Employers are also required to post or notify workers in writing regarding when and where they will be paid.

toxic chemicals that are produced, imported or used in the workplace are properly evaluated. If they pose a hazard to employees, employees must be notified through a "Hazard Communication Program." The goal of the law is to reduce the growing number of injuries, illnesses and deaths caused by exposure to hazardous chemicals in the workplace.

A "Hazard Communication Program"

If you are not sure if your business is covered by the law or to obtain specific information on the requirements for developing a "Hazard Communications Program," you should contact the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), 1391 Speer Blvd, Suite 210,

EMPLOYER SUMMARY

Responsibilities

- Determine whether your workers will be employees or independent contractors.
- Establish clear personnel policies to address issues such as working hours, compensation, fringe benefits, grievances and terminations.
- File the Application for Employer Identification Number, Form SS-4, to obtain your Federal Employer Identification Number (FEIN).
- File the Colorado Business Registration Form CR100, to open your state wage withholding and separate unemployment insurance accounts. You will receive preprinted coupons and information on how to file Colorado wage withholding from the Department of Revenue. The Department of Labor and Employment will send information on how to file Colorado unemployment insurance.

You will receive preprinted forms to file unemployment insurance each quarter. These two separate packets of information should arrive approximately four to six weeks after filing the CR100.

- Submit a copy of the W-4 for all newly hired employees to the Colorado State Directory of New Hires within 20 day of hire date.
- Obtain workers' compensation insurance for your employees. Workers' compensation is obtainable from private insurance carriers. As with any other form of insurance, you should shop around for the best price and service.
- Obtain the proper employer posters. Use the chart in this chapter as a guide.
- Determine whether you are responsible for any local employer tax or registration requirements by contacting the appropriate local authorities.

- Establish the proper safety procedures and maintain the necessary records to satisfy the requirements of the Occupational Safety and Health Administration (OSHA). If you routinely work with "hazardous substances," ensure that you have implemented a hazard communication program.
- Comply with the Americans with Disabilities Act (ADA) to avoid discrimination in your employment practices regarding persons with disabilities.

**To mail in New Hire Reports:
State Directory of New Hires
P.O. Box 2920
Denver, CO 80201-2920**

**To Fax New Hire Reports:
(303) 297-2595**

Denver CO 80204, (303) 844-5285 or 1-800 321-6742.

The Americans with Disabilities Act (ADA)

The ADA extends civil rights protection to individuals with disabilities that is similar to that provided to individuals on the basis of race, sex, national origin, and religion. For small businesses, it guarantees equal opportunity for individuals with disabilities in employment and public accommodations. In the area of employment, the ADA is not an affirmative action program. Businesses must provide equal opportunity for employment to all qualified dis-

hardship on the employer. The Job Accommodation Network (JAN) has been established to assist employers find low cost solutions and resolve employment accommodation problems. Call 1-800-526-7234 or visit their website at www.jan.wvu.edu for free assistance.

Public firms of any size that operate facilities such as restaurants, hotels, theaters, convention centers, retail stores, shopping centers, dry cleaners, laundromats, pharmacies, doctors' offices, hospitals, museums, libraries, parks, amusement parks, private schools, day care centers, health spas, bowling alleys, and gas stations, may not discriminate on the basis of disability. Physical barriers must be

as actions that are easily accomplished and able to be carried out without much difficulty or expense. The courts are required to take into consideration the nature and size of a business in order to determine whether an action is readily achievable. The Architectural Access Board has established detailed guidelines for construction and remodeling. Call 1-800-USA-ABLE (1-800-872-2253) for free assistance.

The Rocky Mountain Disability and Business Technical Assistance Center, located in Colorado Springs, is one of 10 regional centers funded by the National Institute on Disability and Rehabilitation Research, a division of the U.S. Department of Education. Its mission is to provide technical assistance, materials, training and referrals on the Americans with Disabilities Act for individuals and organizations in Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming. For more information contact the Rocky Mountain DBTAC at 3630 Sinton Road, Ste. 103 Colorado Springs, CO 80907, 1-800- 949-4232 (voice, TTY) or visit its website at www.ada-infonet.org

FOR FURTHER INFORMATION ON WORKERS' COMPENSATION LAWS, CONTACT THE COLORADO DIVISION OF WORKERS' COMPENSATION AT (303) 318-8700

abled individuals who can perform the essential duties of a job. Businesses may be required to make reasonable accommodations that are readily achievable and do not cause a financial

removed if removal is readily achievable. If not, alternative methods of providing services must be offered, if those methods are readily achievable. "Readily achievable" is defined