

Safe Harbor Available to Putative Employers During Audit
(Similar to Section 530 Relief at federal level)

If the putative employer meets three requirements, it will not owe withholding or unemployment taxes for workers.

1. Reporting Consistency

- a) The employer timely filed all required federal tax and information returns.

Ex. Form 1099-MISC/1099-NEC for independent contractors who were paid \$600 or more.

- b) Relief is not available for any worker for whom the employer did not file the required information return.

2. Substantive Consistency

- a) The employer (and any predecessor) always treated the worker as an independent contractor.

- b) If any similar worker was treated as an employee, relief is not available.

3. Reasonable Basis

- a) The company had to have a reasonable basis for not treating the worker as an employee.

- b) Reliance on a court case or IRS ruling.

- c) The company was previously audited and the IRS considered employment taxes but did not reclassify the workers.

- d) Independent contractor treatment is common in your industry

- e) 2. Substantive Consistency.

- f) The employer (and any predecessor) always treated the worker as an independent contractor.

- g) If any similar worker was treated as an employee, relief is not available.

- h) Reliance on legal advice or advice on an accountant.

(See IRS Publication 1976, Section 530 Employment Tax Relief Requirements for more information.)