

Independent Contractor in Puerto Rico

In Puerto Rico, the law, sometimes referred to as “Rule 4” indicates that a person will be an Independent Contractor (IC) if four basic criteria are met, and at least three of the five additional criteria are met. The four basic criteria are:

1. The possession or being in the process of possessing an EIN or other similar identification number.
2. An IC will have filed an income tax return as an independent business or as an individual who is self-employed.
3. The relationship between the parties is established through a written contract AND
4. An IC is required by the contract to have the licenses or permits required by the government to operate a business, as well as any legal authorization or licenses needed to perform the contracted work.

To qualify as an IC, an individual must also satisfy at least three of the five additional criteria:

1. Maintain the control and discretion over the way the work will be performed, except for any control necessary to ensure compliance with legal or contractual obligations on behalf of the company.
2. Control over where the work will be performed. An IC maintains control over when and where they will perform the work, rather than reporting to a specific office or at a specific time.
3. The ability to perform work for more than one company at a time; they are not required to work only for one specific company at a time, even if the work performed for each company is substantially similar.
4. The ability to hire others to perform the work in their place.
5. Investment in tools, equipment, materials, licenses or locations needed to perform the work.

In addition, it is wise to consider the economic realities test outlined by the US Department of Labor when analyzing whether an individual qualifies as an IC in Puerto Rico. This will help to further reduce the risk of misclassification. This test focuses on the individual’s opportunity for profit or loss in the relationship, whether the work is an integral part of the company’s business, and the degree of control the company maintains over the project. Many of the factors considered

under the economic realities test are considered in the additional criteria that must be satisfied under Rule 4.