

the artist's J.D. 

Is your new team member an
independent contractor or employee?

Team Names

A WORKBOOK FOR
CREATIVE ENTREPRENEURS

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Legal Nitty Gritty

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We've made our best efforts to prepare this guide, but laws change and the Internet is constantly changing. Because of that, we cannot make any representations or warranties about the contents of this workbook. At some point, the laws, links, or information contained in here will change. And since you have a static version, it'll be out of date.

I'm sure it goes without saying, but this workbook cannot be a replacement for working one-on-one with a lawyer. It's here to give you the tools and information you need to educate yourself about this aspect of your creative business and to empower you to take action. And as such it does not constitute legal advice.

What is her name?

Building a team is one of those situations where every business owner feels different. Some business types (like a brick and mortar) only can happen with a team. Others (like coaching) can be a solo endeavor.

But if you decide to bring on a team member, you have to navigate the waters of deciding if she is an independent contractor or an employee.

As the boss, we often want independent contractors. It makes life so much easier. We don't have to deal with payroll, withholdings, posters, and the like.

But calling our team members by the wrong name can lead to some stiff fines and penalties.

So classifying someone who should be called an employee as an independent contractor isn't worth it.

How to decide her name

What we are looking at is determining the level of independence and control that the team member has. The more that you are in charge, the more likely she is an employee. The more control and flexibility she has, the more likely she is an independent contractor.

Basically, it all boils down to control. Is she in charge? Or are you in charge?

The IRS has given some guidelines and offers a [20-point test](#) that you can use to determine which bucket the team member likely falls in. (For an IRS publication, it's actually quite readable.) I've summarized this test in the worksheet on [Page 6](#).

If you've got a team

If you've already got at least one team member, fill in a copy of the [worksheet](#) for each team member. If you call any of your team members independent contractors, but they really are employees the you need to block off time to complete the red-tape ASAP so you can change them over to employees.

If you are currently team-less, but thinking of hiring a team member

If you have a team member in mind, print out and fill in a copy of the [worksheet](#) for your potential team member. That way, you'll know what name this team member must have when you hire them.



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WHO IS THIS PERSON? AN EMPLOYEE OR INDEPENDENT CONTRACTOR?

Calling a team member by the wrong name can lead to significant fines and penalties. To determine if your team member should be called an independent contractor or employee, the IRS uses a 20 question test.

Question	Yes	No
Can she make a profit or loss on the project?		
Has she invested in tools or equipment?		
Does she work for more than one business?		
Does she offer her services to the general public?		
If you answered "Yes" to all of these questions, she is probably an independent contractor.		

Can you give her instructions on how to do the work?		
Do you train her?		
Are her services integrated in your business?		
Must she provide the services herself?		
Do you hire, supervise, and pay her assistants?		
Is there an ongoing relationship between the two of you?		
Do you set her work hours?		
Must she work full-time for your business?		
Do you control where she does the work?		
Do you determine the order that she does the work?		
Must she report to you for her actions/time?		
Do you pay her by the week, hour, or month?		
Do you pay her expenses and costs?		
Do you provide her with the tools and materials to work?		
Do you have the right to fire her?		
Can she quit at any time?		
If you answered "Yes" to any of these questions, she is probably an employee.		

The end

I hope this checklist made this topic a little less scary! If you want more legal resources like this, you can [join us in the artist's Courtyard](#). You can [join as a DIY-level member](#) (which is free!) or as a [Guide-level member](#) (\$37/month). When you join, you'll get instant access to actionable resources designed to help you achieve your goals—without a bunch of legalese.

Tweet me at [@kiffaniestahle](#) and let me know your biggest aha! moment or any questions.

If you'd like to connect on social media, as a photographer Instagram is my favorite, I'm [@kiffaniestahle](#) there (and most places).

I think every creative business should have a lawyer they trust on their team (just like you should have a CPA and PR maven). If you don't have one already and want to make a lawyer-friend, an amazing place to start is the Volunteer Lawyers for the Arts organization in your state. Here's the [state-by-state directory](#).