

As a matter of law, terms such as a Contractor, strictly dealing with a contract for services and a Subcontractor are terms that have become synonymous with a division of labor between an employee and a field of specialization. Contractors and Subcontractors are used instead of "in house" employees for the simple reason they tend to cost less and create fewer forms and paperwork created by governmental entities such as IRS, Workman's Comp, State Withholding and Unemployment Compensation to name but a few. Contractors and Subcontractors also provide their own on the job insurance. Certain forms of work are highly specialized and in some case require licensing such as an Attorney, an Accountant or other forms of licensed professionals. A determining factor can sometimes be that they are providing a service for only one customer.. There are exceptions to this rule as in the case of an Attorney preparing a Patent for a company that could take months if not years, or an Accountant who might be engaged in an audit that could take months to complete, or preparation of records to go public that in some cases takes years. These professionals might not have additional clients at the time as there are only so many hours in a day. That does not mean they are your "in house" employee. A company could not tell a licensed professional "how they would want their books prepared" as in the case of Enron or Bernie Maddoff, who found this out the hard way. They cannot tell an Attorney "how they wanted a contract to read" as there are accountability issues that require professional standards that cannot be dictated by a customer company. In some cases, there are liability issues that are addressed by separation from the parent company and a sub contractor. Certain tasks should not be performed "in house". There are types of work which may require expensive tooling or specialized equipment that are required and not available on a day to day basis by a company. To purchase a large piece of equipment and train an operator to perform a single duty job may not be cost effective. A company may elect to "rent" a machine and a trained operator, who may be the owner of that piece of equipment, to perform a task on a temporary basis. It would not be unusual for the owner of that equipment to have only a few "customers" during the year as demand may not be high for such a specialized project. In the case of a Municipal Water Well comes to mind. A City would not deem it feasible to own a multi-million dollar well drilling platform and hire a Geologist to tell them exactly where to drill or determine what might be below the earth. Taxpayers would have a lot to say to a City Council who hired an "in house" licensed Geologist, to sit around on the city payroll with benefits for twenty years until another well was needed as the equipment rusts. The prudent move is to hire a well drilling company that owns the proper equipment and employs the necessary people when a well is needed. A particular service provider may spring forward to meet the demand and need for a specialized service or product that companies or governmental entities, such as Department of Defense or municipalities cannot perform without spending countless thousands of dollars and purchasing highly specialized equipment. The number of customers may be limited for the demand of the service provider and that is usually reflected in a higher cost of the job. A service providing company may not have contracts every day of the year and may not be busy for most of the year. The courts have held that this is not a condition that creates an "in house" employee.

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