

# Understanding the Fair Play Act

## How do the Fair Play Acts relate to my audit?

The New York State Construction Industry and the Commercial Goods Transportation Industry Fair Play Acts established legal guidelines for employers in those industries to determine whether or not the individuals who perform work for them are considered employees or independent contractors. By law, employers must properly classify their employees.

The Fair Play Acts directly relate to your audit because the determination of the worker's classification (employee vs. independent contractor) will affect your premium. Employers who misclassify their employees may not have paid the proper deposit premium for those employees. During an audit, the rules of these Fair Play Acts will be applied to identify proper classification for the worker. This could result in additional unexpected premium for individuals who are found to be misclassified.

More information about the Fair Play Acts is provided below. Additional details are available at the Department of Labor's website at [labor.ny.gov](http://labor.ny.gov).

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**The New York State Construction Industry Fair Play Act** was established in 2010 and covers all employees, contractors, and subcontractors. The Fair Play Act sets legal standards for determining whether or not an individual working for an employer is considered an employee or an independent contractor. By law, the individual working for an employer is assumed to be an employee. To be an independent contractor, that individual must:

- Be free from direction and control in performing his or her job, AND
- Perform work that is not part of the usual work done by the business that hired him or her, AND
- Have an independently established business

An employer cannot consider the individual to be an independent contractor unless all three of the above facts apply to the individual's work.

In addition, a sole proprietor, partnership, corporation or other entity can also be considered a separate business entity if it meets all parts of **a 12-part test**. Note: If this proves to be a separate business entity that has employees, a Certificate of Insurance as proof of workers' compensation coverage will be required to exclude any charges for this entity on your audit.

**The Commercial Goods Transportation Industry Fair Play Act** was established in 2014 and defines legal standards for determining whether a driver of commercial vehicles is an employee or an independent contractor. Drivers of commercial vehicles who transport goods are presumed to be employees, unless payments for their services are reported on federal income tax Form 1099 (if required by law). To be independent contractors, they must be:

- Free from control and direction in performing the job, both under contract and in fact
- Performing services outside of the usual course of business for the employer
- Engaged in an independently-established trade, occupation or business that is similar to the service they perform

As in the case with the Construction Fair Play Act, a hired entity can also be considered a separate business entity. To do so, it must meet all parts of **an 11-part test**. Note: If this proves to be a separate business entity that has employees, a Certificate of Insurance as proof of workers' compensation coverage will be required to exclude any charges for this entity on your audit.