



EMPLOYEE OR INDEPENDENT CONTRACTOR?

Whether someone who works for you is an employee of an independent contractor is a very important question. The answer determines your liability to pay and withhold Federal income tax, social security and Medicare taxes and Federal unemployment tax.

The IRS has established a 20-point checklist that can be used in determining the answer to this question. The checklist is designed to determine who has the "right of control." The greater the control exercised over the terms and conditions of employment, the greater the chance that the controlling entity will be the employer. This checklist is only a guideline; it does not guarantee that a person is correctly classified. Most government agencies and courts look to the "totality of the circumstances" and balance the factors to determine whether a worker is an employee or an independent contractor.

Following are the 20-points that have been established by the IRS:

1. Must the individual take instructions from your management staff regarding when, where, and how work is to be done?
2. Does the individual receive training from your company?
3. Is the success or continuation of your business somewhat dependent on the type of service provided by the individual?
4. Must the individual personally perform the contracted services?
5. Have you hired, supervised, or paid individuals to assist the worker in completing the project stated in the contract?
6. Is there a continuing relationship between your company and the individual?
7. Must the individual work set hours?
8. Is the individual required to work full time at your company?
9. Is the work performed on company premises?
10. Is the individual required to follow a set sequence or routine in the performance of his work?
11. Must the individual give you reports regarding his/her work?
12. Is the individual paid by the hour, week, or month?
13. Do you reimburse the individual for business/travel expenses?
14. Do you supply the individual with needed tools or materials?
15. Have you made a significant investment in facilities used by the individual to perform services?
16. Is the individual free from suffering a loss or realizing a profit based on his/her work?
17. Does the individual only perform services for your company?
18. Does the individual limit the availability of his services to the general public?
19. Do you have the right to discharge the individual?
20. May the individual terminate his services at any time?



In general “no” answers to questions 1-16 and “yes” answers to questions 17-20 indicate an independent contractor. However, a simple majority of “no” or “yes” answers does not guarantee independent contractor status. Some questions are either irrelevant or of less importance because the answers may apply equally to employees and independent contractors.

If this is all confusing and you would like the IRS to determine whether or not a worker is considered an employee, you can submit Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding. Go to www.irs.gov/pubs/irs-pdf/fss8.pdf for a copy of this form and its instructions.