

## **TWENTY COMMON LAW FACTORS USED TO DETERMINE EMPLOYMENT STATUS: INDEPENDENT CONTRACTOR VERSUS EMPLOYEE**

Revenue Ruling 87-41, 1987-1 Cumulative Bulletin 296, lists the twenty factors that have been identified to serve as an aid when determining whether an individual is an independent contractor or an employee. The importance of each factor is dependent upon the facts and circumstances of every case.

If the majority of questions 1-14 are answered as “no” and the majority of questions 15-20 are answered as “yes”, then the relationship may be that of an independent contractor rather than an employer-employee. For additional information and assistance in applying these common law factors, contact the Purchasing Division.

### **1 - Instructions**

Will you instruct the individual (or have the right to instruct) on when, where, and how the work will be done?

*An employee must comply with instructions about when, where, and how to work. Even if no instructions are given, the control factor is present if the employer has the right to give instructions.*

### **2 - Training**

Will you train or provide training to the individual on performing services in a particular manner?

*An employee is trained to perform services in a particular manner. Independent contractors ordinarily use their own methods and do not receive training from the purchaser of their services.*

### **3 - Integration**

Are the services that this individual will be providing a part of the business operations?

*An employee's services are integrated into the business operations because the services are important to the success or continuation of the business. This shows that the employee is subject to direction and control.*

### **4 - Services rendered personally**

Will the individual be personally performing the services?

*An independent contractor has the capability of hiring someone to personally perform the work. An employee renders services personally. This shows that the employer is interested in the methods, as well as the results.*

### **5 – Hiring, supervising, and paying assistants**

Will you be hiring, supervising, and paying others to assist the individual?

*An employee works for an employer who hires, supervises, and pays assistants. An independent contractor hires, supervises, and pays assistants under a contract that requires him/her to provide materials and labor, and to be responsible only for the result.*

#### **6 - Continuing relationship**

Will this be an ongoing relationship?

*An employee has a continuing relationship with an employer. A continuing relationship may exist where work is performed at frequently recurring, although irregular, intervals.*

#### **7 - Set hours of work**

Will you be setting the individual's hours of work?

*An employee has set hours of work established by an employer. An independent contractor is the master of his/her own time.*

#### **8 - Full time required**

Will the individual be working only for you?

*An independent contractor is free to work when and for whom he/she chooses.*

#### **9 - Doing work on employer's premises**

Will the individual work on the premises or at a location you designate?

*An employee works at a location or on a route designated by an employer. Generally an independent contractor would not be required to work at a location designated by the contractor, unless required by the nature of the work to be performed.*

#### **10 - Order or sequence set**

Will you define the order or sequencing of the work?

*An employee must generally perform services in the order or sequence set by an employer, which shows that the employee is subject to direction and control.*

#### **11 – Oral or written reports**

Will the individual be asked or required to submit a report to you describing his/her actions?

*An employer may require an employee to submit report. This indicates that the employee must account to the employer for his/her actions. An independent contractor may submit a report or demonstrate accurate completion of the work performed by the contractor.*

**12 – Payment by hour, week, month**

Will you be paying the individual by the hour, week, or month?

*An employee is generally paid by the hour, week, or month. An independent contractor is generally paid by the job or on a straight commission or a set fee for services performed.*

**13 – Payment of business and/or traveling expenses**

Will you be paying any expenses for the individual?

*An employer generally pays an employee's business and travel expenses. This shows the employee is subject to regulation and control.*

**14 – Furnishing of tools and materials**

Will you be furnishing the individual with tools, materials, equipment, etc?

*An employer generally furnishes an employee significant tools, materials, and other equipment.*

**15 – Significant investment**

Will the individual have any investment in the facilities he/she will be using?

*An independent contractor has a significant investment in the facilities he/she uses in performing services for someone else.*

**16 – Realization of profit or loss**

Will the individual realize a profit or suffer a loss?

*An individual who can realize a profit or suffer a loss is generally classified as an independent contractor.*

**17 - Working for more than one firm at a time**

Can the individual be working for more than one employer?

*Individuals may work for more than one employer and still be classified as an employee; however, an independent contractor may provide his/her services to multiple unrelated persons or firms at the same time and generally has a significant client base.*

**18 - Making services available to general public**

Does the individual offer his/her services to the general public?

*An independent contractor makes his/her services available to the general public.*

**19 - Right to discharge**

Have you given up your right to discharge the individual?

*An employee can be fired by an employer. An independent contractor cannot be discharged as long as he/she produces a result that meets the specifications of the contract.*

**20 - Right to terminate**

If the individual quits, will he/she incur a liability for work not completed?

*An employee can quit his/her job at any time without incurring liability. An independent contractor usually agrees to complete a specific job and is responsible for its satisfactory completion, or is legally obligated to make good for failure to complete it.*