

# *Independent Contractor or Employee*

## **Excerpts from IRS Publication 1779**

The courts have considered many facts in deciding whether a worker is an independent contractor or an employee. These relevant facts fall into three main categories: behavioral control; financial control; and relationship of the parties. In each case, it is very important to consider all the facts—no single fact provides the answer. Carefully review the following definitions.

### **BEHAVIORAL CONTROL**

These facts show whether there is a right to direct or control how the worker does the work. A worker is an employee when the business has the right to direct and control the worker. The business does not have to actually direct or control the way the work is done – as long as the employer has the right to direct and control the work. For example:

- **Instructions** – if you receive extensive instructions on how work is to be done, this suggests that you are an **employee**. Instructions can cover a wide range of topics, for example:
  - How, when, or where to do the work
  - What tools or equipment to use
  - What assistants to hire to help with the work
  - Where to purchase supplies and services

If you receive less extensive instructions about what should be done, but not how it should be done, you may be an independent contractor. For instance, instructions about time and place may be less important than directions on how the work is performed.

**Training** – if the business provides you with training about required procedures and methods, this indicates that the business wants the work done in a certain way, and this suggests that you may be an employee.

### **FINANCIAL CONTROL**

These facts show whether there is a right to direct or control the business part of the work. For example:

- **Significant Investment** – if you have a significant investment in your work, you may be an independent contractor. While there is no precise dollar test, the investment must have substance. However, a significant investment is not necessary to be an independent contractor.
- **Expenses** – if you are not reimbursed for some or all business expenses, then you may be an independent contractor, especially if your unreimbursed business expenses are high.
- **Opportunity for Profit or Loss** – if you can realize a profit or incur a loss, this suggests that you are in business for yourself and that you may be an independent contractor.

### **RELATIONSHIP OF THE PARTIES**

These are facts that illustrate how the business and the worker perceive their relationship. For example:

- **Employee Benefits** – if you receive benefits, such as insurance, pension, or paid leave, this is an indication that you may be an employee. If you do not receive benefits, however, you could either be an employee or an independent contractor.
- **Written Contract** – a written contract may show what both you and the business intend. This may be very significant if it is difficult, if not impossible, to determine status based on other facts.

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## *When You Are An Employee*

Your employer must withhold income tax and your portion of social security and Medicare taxes. Also, your employer is responsible for paying social security, Medicare, and unemployment taxes on your wages. Your employer must give you a Form W-2, *Wage and Tax Statement*, showing the amount of taxes withheld from your pay.

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## *When You Are An Independent Contractor*

The business may be required to give you Form 1099-MISC, *Miscellaneous Income*, to report what it has paid to you.

You are responsible for paying your own income tax and self-employment tax. The business does not withhold taxes from your pay. You may need to make estimated tax payments during the year to cover your tax liabilities.

You may deduct business expenses on Schedule C of your income tax return.

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## *Independent Contractor or Employee Relationship Checklist*

	<u>Yes</u>	<u>No</u>
1. Worker must comply with instructions about performance services.	_____	_____
2. Worker is trained on-the-job.	_____	_____
3. Worker's services are integrated in the business.	_____	_____
4. Worker must personally render services.	_____	_____
5. Workers hires or fires assistants at the director of the employer.	_____	_____
6. Work relationship is continuous.	_____	_____
7. Specific work hours and days are required.	_____	_____
8. Worker must devote full-time to the business of the employer.	_____	_____
9. Work is done on employer's premises.	_____	_____
10. Work is done in sequence as determined by employer.	_____	_____
11. Worker submits oral or written reports.	_____	_____
12. Worker is paid in regular amounts at specific intervals.	_____	_____
13. Worker's business and travel expenses are reimbursed.	_____	_____
14. Worker is provided with tools, equipment, and/or materials.	_____	_____
15. Worker has no significant investment in the facilities or equipment.	_____	_____
16. Worker is paid for services only (has no opportunity for profit or loss).	_____	_____
17. Worker usually works exclusively for one organization.	_____	_____
18. Worker's services are not offered to the general public.	_____	_____
19. Worker can be discharged without liability.	_____	_____
20. Worker can terminate employment without liability.	_____	_____

"NO" responses indicate that a worker may be an independent contractor. The degree of importance of each factor varies with each position. Some factors do not apply to certain positions, and, therefore, should not be given as much weight while other factors may be more significant.

What determines the substance of a particular relationship is the right of the employer to exercise direction and control over the worker.

A majority of "NO" responses does not necessarily equate to an independent contractor status.