

Procedure 2001e: FACTORS TO CONSIDER IN THE PROPER CLASSIFICATION OF WORKERS

1. Full time required. If the worker must devote full time to the payer's business, the payer has control over the worker's time and by implication restricts the worker from other gainful activity. An independent contractor is free to work when and for whom he/she chooses.
2. Instructions. A worker who is required to comply with instructions about when, where, and how to work is ordinarily an employee. The control factor is present if the payer has the right to require compliance with the instructions. The instructions showing how to reach the desired results may be oral or written.
3. Training. Training a worker indicates that the payer exercises control over the means by which the result is accomplished. Training can include supervision, correspondence with the worker, meetings, etc., to ensure completion of a job in a particular method or manner. An independent contractor ordinarily uses his/her own methods and receives no training from the purchaser of his/her services.
4. Integration. When the success or continuation of a business depends to an appreciable degree on the performance of certain services, the worker performing those services is deemed to be subject to a certain amount of control by the owner of the business.
5. Services rendered personally. If the services must be rendered personally, the payer presumably is interested in the methods used to accomplish the work as well as the results. If the worker performs the same type of work that is generally performed by the payer's regular employees and generally works side by side with regular employees, it is likely he/she is also an employee.
6. Hiring, supervising, and paying assistants. Control is exercised if the payer hires, supervises, and pays assistants. If the worker has the right to bring in someone else to do the work or assist in the work, he/she is probably an independent contractor. If one worker hires and pays other workers and he/she is responsible for only attainment of a result, the payer/worker is an independent contractor, the payee workers are his/her employees. Any contract to evidence independent contractor status should state that the worker/contractor has the right to use whomever he/she pleases to accomplish the purpose of the contract. This provision helps establish the assistants as the worker's/contractor's and not the payer's employees. The contract should also provide that the worker/contractor will treat his/her assistants as employees and comply with all tax requirements.
7. Continuing relationship. An employer-employee relationship exists if the worker provides services of a recurring type and kind regularly over an extended period. An employee

relationship is generally continuous and indefinite. An independent contractor is generally engaged for the length of time necessary to complete a specific job.

8. Set hours of work. Hours of work set by the payer indicates control and prevents the worker from being master of his/her own time, one of the rights of an independent contractor.
9. Doing work on the payer's premises. Requiring the worker's physical presence indicates control, especially when the work is the kind that could be done elsewhere. Control over the place of work is indicated when the payer has the right to compel a person to travel a designated route, to canvass a territory within a certain time, to follow up and report on leads, or to work at specific places as required.
10. Order or sequence set. A worker who is not free to choose his/her own pattern of work but must perform services in the sequence set by the payer is subject to the payer's control.
11. Oral or written reports. Control is exercised by a purchaser of services if the worker must render frequent reports.
12. Payment by hour, week, or month. Period-based compensation generally indicates an employer-employee relationship, provided this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of doing a job. Payment made by the job or on a straight commission generally indicates that the worker is an independent contractor.
13. Payment of business or traveling expenses. Another indication of an employer-employee relationship is reporting and reimbursing of the worker's expenses. An independent contractor pays for his/her own expenses including licenses and registrations.
14. Furnishing tools and materials. If the payer furnishes significant tools, materials, and other equipment, an employer-employee relationship usually exists.
15. Significant investment. A worker may be independent contractor if he/she invests in facilities that are not typically maintained by employees (e.g., the maintenance of an office rented at fair value from an unrelated party). An employee depends on the payer for such facilities. The IRS accords little weight to an investment for which the payer is liable, where the worker's equity is small, and the item is being purchased "on time" with periodic payments. To determine whether an investment is adequate, the Service compares the value of the investment to the total value of all of the facilities needed for doing the work.
16. Realization of profit or loss. An independent contractor has an opportunity for a profit and bears risk of loss. The opportunity for profit or loss can be established by the fact that an individual hires, directs, and pays assistants; by the fact that an individual has an office, equipment, materials, or other work facilities; by the fact that an individual has continuing or recurring liabilities or obligations, and success or failure depends on the

relationship of receipts and expenditures; by the fact that an individual agrees to perform specific jobs for prices agreed upon in advance and pays expenses incurred in connection with the work; and by the fact that the quality of individual's services and those of his/her assistants establish or affect the service provider's business reputation and not the reputation of the purchaser of the services.

17. Working for more than one firm at a time. If a worker performs more than de minimis services for a number of unrelated payers at the same time, he/she is usually an independent contractor.
18. Making service available to the general public. A worker is usually an independent contractor if he/she makes services available to the general public on a regular and consistent basis. This would involve an office, possibly assistants, business licenses, listings in business directories, and advertising.
19. Right to discharge. The right of the payer to discharge a worker without civil liability for lost profits indicates that he/she is an employee. The payer exercises control through the threat of dismissal. Without being given notice, an independent contractor cannot be "fired" so long as he/she produces a result which meets contract specifications.
20. Right to terminate. The worker's right to quit without civil liability for additional costs incurred by the payer is indicative of employee status. An independent contractor usually agrees to complete a specific job; he/she is responsible for its satisfactory completion or legally obligated to make good for failure to complete.

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