

## CALIFORNIA INDEPENDENT CONTRACTOR FACTORS

An "independent contractor" is a person who exercises an independent employment or occupation and is under the control of the person for whom services are performed only with respect to the result of the work and not as to the means by which it is accomplished. **The primary element that establishes a worker as an independent contractor is that the person for whom services are rendered has no right of control over the manner and means of accomplishing the result.** The right of the person for whom services are rendered to exercise control, rather than the actual exercise of that right, is the determinative factor.

In determining whether a person is an independent contractor or an employee, the following factors, based on the common law of agency, are:

- (1) The extent of control that the one who ordered the work may, by the terms of the agreement, exercise over the details of the work.
- (2) Whether or not the one performing the work is engaged in a distinct occupation or business.
- (3) Whether in the particular locality the kind of work involved is usually done under the direction of the person for whom the work is performed or by a specialist without supervision.
- (4) The skill required in the particular occupation.
- (5) Whether the person for whom work is performed or the person performing the work supplies the instrumentalities, tools, and the place of work.
- (6) The length of time for which the person is engaged.
- (7) Whether or not regular working hours are set by the person for whom work is performed.
- (8) Whether payment is by the hour or month or for the job.
- (9) Whether or not the person performing the work is engaged full time by one person.
- (10) Whether or not the work is performed in a specific area or over a fixed route.
- (11) Whether or not the work is a part of the regular business of the person for whom the work is performed.
- (12) Whether the parties believe they are creating an independent contract or an employer-employee relationship.
- (13) Whether or not the person who ordered the work is in business.
- (14) Whether or not the services are terminable without cause at the will of the person for whom the work is performed.
- (15) Whether or not under the terms of the agreement the work may be delegated.

**Treating an employee as an independent contractor can result in imposition of substantial fines and back taxes.**

**THIS MATERIAL IS NOT LEGAL ADVICE. FOR IMPLEMENTATION, CONTACT A QUALIFIED ATTORNEY.**