

FEDERAL INDEPENDENT CONTRACTOR FACTORS

A person is generally an "independent contractor" if he or she is subject to control or direction merely as to the result to be accomplished, and not as to the means and methods for accomplishing the result. An important factor in determining whether the worker is an independent contractor is a finding that he or she is operating his or her own business, assuming the risk of loss, and offering services to the general public. Accordingly, individuals engaged in the pursuit of an independent trade, business, or profession, such as doctors, lawyers, dentists, and construction contractors, are independent contractors

Many factors must be considered in determining whether a worker is an independent contractor. **The key factor is whether the employer has the right to control and direct the individual performing the services, both as to the result to be accomplished and the means by which the result is accomplished.** The IRS has identified 20 factors, listed below, that help indicate whether sufficient control is present to establish an employment relationship. These apply specifically to certain technical jobs in the computer industry, but the method of analysis and the factors used in making the status determination apply to all work situations. The relative importance of each factor will vary depending on the particular occupation and the factual context.

- (1) Is the worker required to comply with others' instructions about when, where, and how to work?
- (2) Is the worker required to be trained?
- (3) Are the worker's services integrated into the business operation?
- (4) Must the worker's services be rendered personally by the worker?
- (5) Does the person for whom services are performed hire, supervise, and pay assistants?
- (6) Does a continuing relationship exist between the worker and the person for whom services are performed?
- (7) Are the worker's hours set by the person for whom services are performed?
- (8) Must the worker devote substantially full time to the business?
- (9) Must the work be performed on the premises of the person for whom services are performed?
- (10) Must the worker perform the work in a particular order or sequence?
- (11) Must the worker submit oral or written reports?
- (12) Is the worker paid on a periodic basis, such as by the hour, week, or month?
- (13) Does the person for whom services are performed normally pay the worker's business and travel expenses?
- (14) Does the person for whom services are performed furnish the worker's tools?
- (15) Does the worker invest in the facilities used to perform the services?
- (16) Can the worker realize a profit or loss as a result of performing the services?
- (17) Can the worker perform services for more than one person or firm at a time?
- (18) Can the worker make his or her services available to the general public?
- (19) Does the person for whom services are performed have the right to discharge the worker?
- (20) Does the worker have the right to end his or her relationship with the person for whom services are performed?

Positive responses to items (1) through (14) and (19) tend to indicate that an employment relationship exists. Positive responses to items (15) through (18) and (20) tend to indicate that an independent contractor relationship exists.

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

©2004-2008 Bradley Smith. All Rights Reserved.
Law Office of Bradley Smith, 1754 Technology Drive, Suite 229, San Jose, CA 95110, (408) 573-1010
brad@bsmithlaw.com