

We help you find your way.



DAVIS
AGNOR
RAPAPORT
SKALNY LLC
ATTORNEYS AT LAW



LEGAL BRIEFS

Contractors v. Employees: Do You Know What You Are?

With the changing landscape of the workforce has come an increase in the number of companies that are subcontracting work to individuals and other companies as an alternative to hiring full time employees. While this approach has many advantages, it is important that employers ensure that their subcontractors fit the mold of subcontractors and not of employees. Failure to do so could expose employers to liability for failing to withhold and pay payroll taxes which it is required to do for employees. Because the IRS has better success collecting payroll taxes from employers than from subcontractors, it is often quick to reclassify independent contractors into employees, and hold employers responsible for the collection of applicable taxes.

The following 20 factors will assist you in determining whether a person should be classified as an employee or as an independent contractor. The factors will apply in differing degrees depending on the workplace environment and your occupation.

1. Oversight & Control. An individual who is required to comply with another's instructions about when, where and how to work is typically deemed an employee.
2. Training. If the individual is required to receive training to learn how to accomplish his work, an employment relationship is probable.
3. Workplace Integration. The more the worker is integrated into the employer's business operations, the more likely it is that he will be classified as an employee.
4. Personal Service. Increased amounts of personal service by a worker suggest that the individual is an employee.
5. Worker's Assistants. If the worker is responsible for his own assistants, he is likely to be deemed an independent contractor, rather than an employee.
6. Continuity of Relationship. A continuing or recurring relationship suggests employment.
7. Work Hours. If hours are established by the business, the workers are likely to be classified as employees.
8. Autonomy. An independent contractor has more freedom as to when and for whom he works, including the setting of his own hours.
9. Location of Work. If the worker is required to perform his services at the place of employment, he is far more likely to be deemed an employee.
10. Sequence of Work. The more an employer, rather than the worker, controls the sequence in which work is accomplished, the far more likely it is that he is an employee.
11. Reporting. The more the worker must report the progress of his work and the more his work is supervised, the greater the likelihood that he is an employee.
12. Payment for Services. Workers that get paid by the job, rather than by the hour, are typically independent contractors.
13. Payment for Travel Expenses. Employer's typically control an employee's business activities, including travel expenses.
14. Tools of the Trade. Independent contractors typically furnish their own tools to accomplish their work.
15. Investment. Independent contractors more often invest in facilities that are used in performing services.
16. Sharing Profits & Losses. Workers who realize profits or losses from the work they perform are generally independent contractors.



17. Multiple Jobs. An independent contractor will often perform services for more than one business at a time.
18. Services Available to the Public. Workers marketing their services to the public are generally classified as independent contractors.
19. Right to Discharge. An independent contractor cannot be fired as long as he produces a result that meets contract specifications.
20. Right to Terminate. If the worker can terminate services without liability, this indicates an employment relationship.

While these factors are not necessarily dispositive of a worker's classification, they are sure to assist you in preventing a knock on your door from your favorite IRS agent. For more information on employees and independent contractors, contact our office or your accountant.