**INDEPENDENT CONTRACTORS**

**IRS 20-FACTOR TEST**

An independent contractor is a worker who individually contracts with an employer to provide specialized or requested services on an as-needed or project basis. This individual is free from control and directionof the performance of their work, and the individual is customarily engaged in an independent trade, occupation, profession, or business.

Independent contractors have greater control over the way they carry out their work than employees. Employers assume fewer duties with respect to independent contractors than employees.

Independent contractors are generally outside the coverage of various laws that apply to the employer-employee relationship. An employer must exercise extreme caution when classifying a worker as an independent contractor. This is especially important when it comes to issues such as pension, workers compensation, and wage and hour law. Employers do not withhold federal, state and local taxes from wages paid to independent contractors, they are not included in an employer’s benefits programs, are exempt from wage and hour, employment discrimination laws and unemployment insurance. Therefore, the penalties for misclassifying a worker can be huge. Penalties can include back taxes or premiums, civil fines, interest, and other retroactive damages.

The independent contractor relationship is beneficial to both parties, so pursuing an independent contractor arrangement is a practical way to do business for employers. The IRS has developed guidelines to help the employer to correctly classify their employment relationships. The IRS follows the common law test for determining whether an individual is an employee for federal employment tax purposes. Under the common law test an employer-employee relationship exists if the person for whom services are performed has the right to control and direct a worker in results, specific details and the means by which the results are accomplished.

The “Reasonable Basis” test provides a “safe harbor” to employers, which bars the IRS from challenging the status of workers as independent contractors if certain conditions are met. If the following conditions are met the employer does not have tax liability for workers under Section 503 and the IRS cannot penalize an employer for misclassifying a worker as an independent contractor:

* The employer has always treated the worker as an independent contractor
* The employer has filed all returns for the worker for all periods after 1978 and the returns were consistent with independent contractor status
* The employer had a reasonable basis for treating workers as an independent contractor by either relying on judicial precedent, published rulings or technical advice, a prior IRS audit showing no penalties assessed for similarly situated workers, or a longstanding recognized practice of a significant segment of the industry in which the individual worked.

The IRS developed the 20-Factor Test shown below to help employers evaluate whether a worker is an employee or an independent contractor. No one factor on the test is more indicative of employee status than another. If there is a high number of “yes” marks, then it will most likely indicate the presence of an employment relationship, a high number of “no” marks may or may not indicate a contractor relationship. Therefore, it is best for employers to err on the side of caution and to pursue an IRS ruling when in doubt. The important thing to remember when evaluating the status is who has the right to control the work as to when and how it is completed.

Employers and workers should file [Form SS-8](https://www.irs.gov/pub/irs-pdf/fss8.pdf) (Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding) to get a determination from the IRS as to whether or not a worker is an independent contractor.

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| **IRS 20-FACTOR TEST** | | **CHECK YES OR NO** | | | | |
| 1. Instructions | Is the worker required to comply with employer’s instructions about when, where, and how to work? |  |  | YES |  | NO |
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| 2. Training | Is training required? Does the worker receive training from or at the direction of the employer, includes attending meetings and working with experienced employees? |  |  | YES |  | NO |
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| 3. Integration | Are the worker’s services integrated with activities of the company? Does the success of the employer’s business significantly depend upon the performance of services that the worker provides? |  |  | YES |  | NO |
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| 4. Services Rendered Personally | Is the worker required to perform the work personally? |  |  | YES |  | NO |
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| 5. Authority to hire, supervise and pay assistants | Does the worker have the ability to hire, supervise and pay assistants for the employer? |  |  | YES |  | NO |
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| 6. Continuing Relationship | Does the worker have a continuing relationship with the employer? |  |  | YES |  | NO |
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| 7. Set Hours of Work | Is the worker required to follow set hours of work? |  |  | YES |  | NO |
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| 8. Full-time Work Required | Does the worker work full-time for the employer? |  |  | YES |  | NO |
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| 9. Place of Work | Does the worker perform work on the employer’s premises and use the company’s office equipment? |  |  | YES |  | NO |
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| 10. Sequence of Work | Does the worker perform work in a sequence set by the employer? Does the worker follow a set schedule? |  |  | YES |  | NO |
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| 11. Reporting Obligations | Does the worker submit regular written or oral reports to the employer? |  |  | YES |  | NO |
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| 12. Method of Payment | How does the worker receive payments? Are there payments of regular amounts at set intervals? |  |  | YES |  | NO |
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| 13. Payment of Business and Travel  Expenses | Does the worker receive payment for business and travel expenses? |  |  | YES |  | NO |
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| 14. Furnishing of tools and materials | Does the worker rely on the employer for tools and materials? |  |  | YES |  | NO |
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| 15. Investment | Has the worker made an investment in the facilities or equipment used to perform services? |  |  | YES |  | NO |
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| 16. Risk of Loss | Is the payment made to the worker on a fixed basis regardless of profitability or loss? |  |  | YES |  | NO |
|  |  |
| 17. Working for more than one company at a time | Does the worker only work for one employer at a time? |  |  | YES |  | NO |
|  |  |
| 18. Availability of services to the general public | Are the services offered to the employer unavailable to the general public? |  |  | YES |  | NO |
|  |  |
| 19. Right to discharge | Can the worker be fired by the employer? |  |  | YES |  | NO |
| 20. Right to quit | Can the worker quit work at any time without liability? |  |  | YES |  | NO |
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