

INDEPENDENT CONSULTANT SERVICES

Common Law Rules

There is an increased oversight by the Internal Revenue Service as well as further clarification through the courts on the “suffer or permit” standard. “An ‘entity suffers or permits’ an individual to work if, as a matter of economic reality, the individual is dependent on the entity.” According to the July 15, 2015, Administrator’s Interpretation No. 2015-1 issued by the U.S. Department of Labor, “misclassification of employees as independent contractors is found in an increasing number of workplaces in the United States.”

To protect MCOE, consider the following essential questions if you are considering an independent contractor relationship:

1. Is the work an integral part of the district?
2. Does the worker’s managerial skill affect the profit or loss opportunity for the contractor?
3. How does the worker’s investment compare to the district investment?
4. Does the work require special skill and initiative?
5. Is the relationship between the contractor and the district permanent or indefinite?
6. What is the nature and degree of the district’s control?

Misclassifications are expensive and would require a significant amount of time to audit and correct. Before classifying an individual as a contractor, consider the essential questions above and/or consult with the business services department.

Internal Revenue Service 20 point Checklist for Independent Contractor

Mistakenly classifying an employee as an independent contractor can result in significant fines and penalties. There are 20 factors used by the IRS to determine whether you have enough control over a worker to be an employer. Though these rules are intended only as a guide-the IRS says the importance of each factor depends on the individual circumstances-they should be helpful in determining whether you wield enough control to show an employer-employee relationship. If you answer “Yes” to all of the first four questions, you’re probably dealing with an independent contractor; “Yes” to any of questions 5 through 20 means your worker is probably an employee.

1. **Profit or loss.** Can the worker make a profit or suffer a loss as a result of the work, aside from the money earned from the project? (This should involve real economic risk-not just the risk of not getting paid.)
2. **Investment.** Does the worker have an investment in the equipment and facilities used to do the work? (The greater the investment, the more likely independent contractor status.)
3. **Works for more than one firm.** Does the person work for more than one company at a time? (This tends to indicate independent contractor status, but isn’t conclusive since employees can also work for more than one employer.)
4. **Services offered to the general public.** Does the worker offer services to the general public?
5. **Instructions.** Do you have the right to give the worker instructions about when, where, and how to work? (This shows control over the worker.)
6. **Training.** Do you train the worker to do the job in a particular way? (Independent contractors are already trained.)

7. **Integration.** Are the worker's services so important to your business that they have become a necessary part of the business? (This may show that the worker is subject to your control.)
8. **Services rendered personally.** Must the worker provide the services personally, as opposed to delegating tasks to someone else? (This indicates that you are interested in the methods employed, and not just the results.)
9. **Hiring assistants.** Do you hire, supervise, and pay the worker's assistants? (Independent contractors hire and pay their own staff.)
10. **Continuing relationship.** Is there an ongoing relationship between the worker and yourself? (A relationship can be considered ongoing if services are performed frequently, but irregularly.)
11. **Work hours.** Do you set the worker's hours? (Independent contractors are masters of their own time.)
12. **Full-time work.** Must the worker spend all of his or her time on your job? (Independent contractors choose when and where they will work.)
13. **Work done on premises.** Must the individual work on your premises, or do you control the route or location where the work must be performed? (Answering no doesn't by itself mean independent contractor status.)
14. **Sequence.** Do you have the right to determine the order in which services are performed? (This shows control over the worker)
15. **Reports.** Must the worker give you reports accounting for his or her actions? (This may show lack of independence)
16. **Pay Schedules.** Do you pay the worker by hour, week, or month? (Independent contractors are generally paid by the job or commission, although by industry practice, some are paid by the hour.)
17. **Expenses.** Do you pay the worker's business or travel costs? (This tends to show control.)
18. **Tools and materials.** Do you provide the worker with equipment, tools, or materials? (Independent contractors generally supply the materials for the job and use their own tools and equipment.)
19. **Right to fire.** Can you fire the worker? (An independent contractor can't be fired without subjecting you to the risk of breach of contract lawsuit.)
20. **Worker's right to quit.** Can the worker quit at any time, without incurring liability? (An independent contractor has a legal obligation to complete the contract.)