

THE IRS'S 20 FACTORS USED TO DETERMINE EMPLOYMENT STATUS

The traditional tests to determine whether a worker is an employee or independent contractor involve the concept of control: Are the services of the worker subject to the Taxpayer's will and control over what must be done and how it must be done? In *Revenue Ruling 87-41, 1987-1 CB 296*, the IRS developed 20 factors used to determine whether a worker is an independent contractor under the common law. Remember: the burden of proof is on the taxpayer; therefore, in general, at least 11 of these factors must show independent contractor status under the common law tests.

For the following questions, a "yes" answer means the worker is an employee.

1. Does the principal provide instructions to the worker about when, where, and how he or she is to perform the work?
2. Does the principal provide training to the worker?
3. Are the services provided by the worker integrated into the principal's business operations?
4. Must the services be rendered personally by the worker?
5. Does the principal hire, supervise and pay assistants to the worker?
6. Is there a continuing relationship between the principal and the worker?
7. Does the principal set the work hours and schedule?
8. Does the worker devote substantially full time to the business of the principal?
9. Is the work performed on the principal's premises?
10. Is the worker required to perform the services in an order or sequence set by the principal?
11. Is the worker required to submit oral or written reports to the principal?
12. Is the worker paid by the hour, week, or month?
13. Does the principal have the right to discharge the worker at will?
14. Can the worker terminate his or her relationship with the principal any time he or she wishes without incurring liability to the principal?
15. Does the principal pay the business or traveling expenses of the worker?

For the following questions, a "yes" answer means the worker is an independent contractor.

16. Does the worker furnish significant tools, materials and equipment?
17. Does the worker have a significant investment in facilities?
18. Can the worker realize a profit or loss as a result of his or her services?
19. Does the worker provide services for more than one firm at a time?
20. Does the worker make his or her services available to the general public?