

Employee vs. Independent Contractor Determination Checklist

Business units are responsible for making every attempt to ensure that an individual being hired is truly an independent contractor and will not be in a work situation that the IRS could determine is that of an employer/employee relationship. The IRS has established a 20-point checklist that can be used as a guideline in determining whether a contractor can legally be paid on a 1099. This checklist helps determine who has the "right of control." Does the employer have control or the "right of control" over the individual's performance of the job and how the individual accomplishes the job? The greater the control exercised over the terms and conditions of employment, the greater the chance that the controlling entity will be held to be the employer. The right to control (not the act itself) determines the status as an independent contractor or employee.

The 20-point checklist is only a guideline; it does not guarantee that a person is correctly classified. There is no one single homogenous definition of the term "employee." Most agencies and courts typically look to the totality of the circumstances and balance the factors to determine whether a worker is an employee or an outside contractor.

Note: The **Hiring Administrator** must complete the checklist to ensure that the contractor is truly considered an outside contractor, not an employee. The checklist must be completed, reviewed, and signed by the **Hiring Administrator and the Business Unit Director**, and forwarded as part of this agreement.

| | | Yes | No |
|-----|--|--------------------------|--------------------------|
| 1. | Must the individual take instructions from your management staff regarding when, where and how work is to be done? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. | Does the individual receive training from your company? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. | Is the success or continuation of your business somewhat dependent on the type of service provided by the individual? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. | Must the individual personally perform the contracted services? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. | Have you hired, supervised, or paid individuals to assist the worker in completing the project stated in the contract? | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. | Is there a continuing relationship between your company and the individual? | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. | Must the individual work set hours? | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. | Is the individual required to work full time at your company? | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. | Is the work performed on company premises? | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. | Is the individual required to follow a set sequence or routine in the performance of his work? | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. | Must the individual give you reports regarding his/her work? | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. | Is the individual paid by the hour, week, or month? | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. | Do you reimburse the individual for business/travel expenses? | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. | Do you supply the individual with needed tools or materials? | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. | Have you made a significant investment in facilities used by the individual to perform services? | <input type="checkbox"/> | <input type="checkbox"/> |
| 16. | Is the individual free from suffering a loss or realizing a profit based on his/her work? | <input type="checkbox"/> | <input type="checkbox"/> |
| 17. | Does the individual have other clients he/she services as an independent contractor? | <input type="checkbox"/> | <input type="checkbox"/> |
| 18. | Does the individual make his/her services available to the public? | <input type="checkbox"/> | <input type="checkbox"/> |
| 19. | Do you have the right to discharge the individual? | <input type="checkbox"/> | <input type="checkbox"/> |
| 20. | May the individual terminate his services at any time? | <input type="checkbox"/> | <input type="checkbox"/> |

Hiring Administrator Name

Business Unit Director (Required)

Signature/Date

Signature/Date