

INDEPENDENT CONTRACTORS OR EMPLOYEES?

THE 20 FACTOR TEST

The Internal Revenue Service (coordinating closely with the respective state agencies charged with payroll tax compliance enforcement in each state) applies a 1987 Revenue Ruling (87-4) known as the “20 Factor Test” to determine if workers are employees or Independent Contractors. A “yes” answer to any of the 20 questions would indicate that the person is an employee and not an Independent Contractor. The detailed discussion of each of these factors clearly demonstrates the rigorous standards that must be met in order to lawfully classify a worker as an Independent Contractor.

The message that runs throughout the 20 Factor Test is that the right to control is critically important in determining whether an individual is an employee or an Independent Contractor. If control by the Fraternity or Sorority can be demonstrated in any of these 20 areas, then the governing authority will possibly find an Employer / Employee relationship exists. While the 20 Factor Test is a measure of Independent Contractor status, many states have the definition of Employee or Independent Contractor written into the Worker’s Compensation statutes or other separate laws dealing with employment.

1) Instructions – Is the person required to comply with instructions about when, where and how the work is to be done? If a person is required to comply with instructions as to when and how to perform the work, that person is likely an employee.

2) Training – Is the person provided training? Is the individual receiving training by an experienced employee working with him or her? Training points to employee status, since it indicates that the employer wants the services to be performed in a particular manner and is exerting control.

3) Integration – Are the services for the operations of the company? The more integrated the individual’s task is, the more likely the company has control – making the individual an employee.

4) Service Rendered Personally – Are the services provided personally by the individual? If the service must be rendered by a particular individual, then the employer likely has control, meaning the individual is likely an employee.

5) Hiring, Supervising and Paying Assistants – Does the company hire, supervise or pay assistants to help the person? If the company controls these activities, employee status is indicated.

6) Continuing Relationship – Is there a continuing relationship between the person and the company? An ongoing relationship with an individual in a company tends to indicate the existence of an employer/employee relationship.

7) Set Hours of Work – Does the company set work schedules? If the company can set specific hours as to when the individual must be on the job, the person will likely be considered an employee.

8) Full Time Required – Does the person devote his or her full work time to the company? If the company requires an individual to devote full time to the business, the individual is likely an employee.

9) Location Of Work – Is the work performed at the company’s place of business or at specific places designated by the company? Control is the key word. Control over the place of work, on company premises or a site determined by the company, indicates an employee relationship.

10) Order Or Sequence Of Work – Does the company direct the sequence of the work performed? If the employer can set the sequence in which services are to be performed, then control is being exercised, and the individual providing services is an employee.

11) Oral Or Written Reports – Are reports regularly given to the company? If oral or written reports are required by the company, then control and an employer/employee relationship is indicated.

12) Payment By Hour, Week or Month – Is the person paid hourly, weekly or monthly (as opposed to “by the job”)? An Independent Contractor is normally paid by the job or on a commission basis, rather than on a schedule or by a guaranteed amount.

13) Payment Of Business or Travel Expense – Does the company reimburse the person for business or travel expense? The fact that the employer will pay for an individual’s work-related expenses is indicative of control and employee status.

14) Tools And Materials – Does the company supply materials or tools to the person? Providing tools and materials to an individual suggests that a company is exercising control, which means that the individual is an employee.

15) Significant Investment – Does the person have equipment or facilities to perform services? If a person has investment in facilities or equipment, that person is likely an Independent Contractor.

16) Profit Or Loss Potential – Is there an exposure to loss, or the potential of profit for the individual? A person who is in a position to realize a profit or suffer a loss as a result of the service provided is likely an Independent Contractor.

17) Working For More Than One Firm – Does the person work exclusively for the company? If the person works for more than one company at the same time, he can be an Independent Contractor.

18) Making Service Available To The General Public – Does the individual make his services available to the public? Advertising to the general public the availability to perform a particular service indicates an Independent Contractor.

19) Right To Discharge – Can the worker be dismissed for reasons other than non-performance of contract specifications? The right to discharge an individual is clearly an act of control and is indicative of an employer/employee relationship.

20) Right To Terminate – Can the person terminate his relationship with the company without liability for failure to complete the job? Employees can usually terminate the relationship with the employer at any time without incurring any liability.

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ITEMS FOR REVIEW
With
Legal Counsel / Insurance Representative
