

Wright Ford Young & Co.

Certified Public Accountants and Consultants, Inc.

IS YOUR WORKER AN INDEPENDENT CONTRACTOR OR AN EMPLOYEE?

Dear Clients and Friends:

The question of whether a worker is an independent contractor or employee for federal income and employment tax purposes is a complex one. This question is intensely factual, and the stakes can be very high. As I'm sure you know, if a worker is an employee the company must withhold federal income and payroll taxes, pay the employer's share of FICA taxes on the wages plus FUTA tax, and often provide the worker with fringe benefits it makes available to other employees. In addition to these federal tax obligations, there may be state tax obligations as well. However, these tax obligations do not apply for a worker who is an independent contractor. The business sends the independent contractor a Form 1099-MISC for the year showing what he or she was paid (if it amounts to \$600 or more), and that's it.

Unfortunately, there is no uniform definition of the term "employee". Under the common-law rules, an individual generally is an employee if the company he or she works for has the right to control and direct them regarding the job they are to do and how they are to do it. The employer doesn't have to actually direct or control how the services are performed; it's enough if the employer has the right to do so. If your worker does not fall within these common law rules, generally he or she is an independent contractor.

The IRS has identified 20 factors (see attached) that are used as guidelines to determine whether sufficient control is present to establish an employer-employee relationship. These factors are separated into three broad categories: Behavioral control, Financial control and Relationship of the parties. *Behavioral control* covers facts that show whether the business has a right to direct or control how the work is done through instructions, training or other means. *Financial Control* covers facts that show whether the business has a right to direct or control the financial and business aspects of the worker's job. *Relationship of the parties* factor relates to how the workers and the business owner perceive their relationship.

Individuals who are "statutory employees," (that is, specifically identified by the tax code as being employees) are treated as employees for social security tax purposes even if they aren't subject to an employer's direction and control (that is, even if the individuals wouldn't be treated as employees under the common-law rules). These individuals are agent drivers and commission drivers, life insurance salespeople, home workers, and full-time traveling or city salespeople who meet a number of tests. Statutory employees may or may not be employees for non-FICA purposes. Corporate officers are statutory employees for all purposes.

Individuals who are "statutory independent contractors" aren't employees for purposes of wage withholding, FICA or FUTA, and the income tax rules in general. These individuals are qualified real estate agents and certain direct sellers.

Under certain circumstances, you can ask the IRS to rule on whether a worker is an independent contractor or employee. To request this determination, the business can file Form SS-8 with the IRS.

If you would like to discuss the complex rules mentioned above in more detail, please do not hesitate to contact our office.

Very Truly Yours,

Wright Ford Young & Co.,
Certified Public Accountants and Consultants, Inc.

To ensure compliance with the requirements imposed by the Treasury Department Regulations (Internal Revenue Service), Wright Ford Young & Co. is required to inform you that any tax advice in this written or electronic communication was not intended or written to be used, and it cannot be used, by a client or any other person or entity for the purpose of avoiding penalties that may be imposed on any taxpayer.

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