

Independent Contractor or Employee?

One of the steps we recommend to clients who use independent contractors and who therefore face a heightened risk of a costly IRS payroll tax or benefits audit, is a quick review of some of the key things the IRS tells its agents to look at in determining whether a worker is really an employee.

The primary inquiries fall into three categories. Who has financial control of the job? Who can exercise control over how the worker performs the specific task? And how do the parties themselves view the relationship? When reviewing the checklist, keep in mind that the IRS will make its decision based on the whole picture, not just a single factor.

Workers are more likely to be classified as independent contractors if they:

- *Make a significant investment in business property (a home computer is not significant);
- *Pay their own business expenses;
- *Receive a flat fee that is not based on an hourly or similar rate;
- *Are not prohibited from doing work for other companies;
- *Can pay subcontractors to get the job done;
- *Are not performing services as an integral part of your regular business;
- *Have a contract with an enforceable liquidated damages provision;
- *Can make a profit;
- *Can suffer a loss.

Workers are more likely to be classified as employees if they:

- *Are given specific instructions and on-going training in how to get the work done;
- *Cannot work for others;
- *Have expenses paid by your company;
- *Are paid with a salary or hourly wage;
- *Do not have a significant investment in their trade or business;
- *Are an integral part of your regular business;
- *Receive direct reimbursement for all, or almost all, expenses;

Less important is:

- *Whether or not the work is performed on the business's premises;
- *Whether the worker has flexibility in setting hours;
- *Whether the relationship is temporary or short-term;
- *Whether the work is full- or part-time;
- *Whether the worker performs services for one or more businesses.

If you suspect from this list that there might be a problem, we would be happy to come in and do an audit of your hiring practices and suggest effective solutions if necessary.