



## EMPLOYEES VS INDEPENDENT CONTRACTORS

(From IRS Publication 15A)

An employer must generally withhold income taxes, withhold and pay social security and Medicare taxes, and pay unemployment taxes on wages paid to an employee. An employer does not generally have to withhold or pay any taxes on payments to independent contractors.

**COMMON-LAW-RULES** – To determine whether an individual is an employee or an independent contractor under the common law, the relationship of the worker and the business must be examined. All evidence of control and independence must be considered. In any employee-independent contractor determination, all information that provides evidence of the degree of control and the degree of independence must be considered.

Facts that provide evidence of the degree of control and independence fall into three categories: behavioral control, financial control, and the type of relationship of the parties as shown below.

**BEHAVIORAL CONTROL** – Facts that show whether the business has a right to direct and control how the workers does the task for which the worker is hired include the type and degree –

- Instructions the business gives the worker – An employee is generally subject to the business' instructions about when, where, and how to work. Even if no instructions are given, sufficient behavior control may exist if the employer has the right to control how the work results are achieved.
- Training the business gives the worker – An employee may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods.

**FINANCIAL CONTROL** – Facts that show whether the business has a right to control the business aspects of a worker's job include:

- The extent to which the worker has unreimbursed business expenses – Independent contractors are more likely to have unreimbursed expenses than employees. Fixed ongoing costs that are incurred regardless of whether work is currently being performed are especially important. However, employees may also incur unreimbursed expenses in connection with the services they perform for their business.
- The extent of the worker's investment – An independent contractor often has a significant investment in the facilities he or she uses in performing services for someone else. However, a significant investment is not required.

## **EMPLOYEES VS INDEPENDENT CONTRACTORS (Continued)**

- The extent to which the worker makes services available to the relevant market is important.
- How the business pays the worker – An employee is generally paid by the hour, week, or month. An independent contractor is usually paid by the job. However, it is common in some professions, such as law, to pay independent contractors hourly.
- The extent to which the worker can realize a profit or incur a loss – An independent contractor can make a profit or incur a loss.

**TYPE OF RELATIONSHIP** – Facts that show the parties' type of relationship include:

- Written contracts describing the relationship the parties intended to create.
- Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay.
- The permanency of the relationship – If you engage a worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence that your intent was to create an employer-employee relationship.
- The extent to which services performed by the worker is a key aspect of the regular business of the company – If a worker provides services that are a key aspect of your regular business activity, it is more likely that you will have the right to direct and control his or her activities. For example, if a law firm hires an attorney, it is likely that it will present the attorney's work as its own and would have the right to control or direct that work. This would indicate an employer-employee relationship.