



DO YOU KNOW Who Your Employees Are?

Employee vs. Independent Contractor

Whether a worker is an employee or an independent contractor is more than semantics. Employers must pay state and federal unemployment tax, social security tax and workers' compensation/disability premiums for employees. When a worker is an independent contractor, none of these payments are required. By incorrectly defining a worker as an independent contractor, an employer may be liable for past taxes. So how should a worker be classified? For purposes of federal tax obligations, an employment relationship exists when the person for whom the services are performed has the right to control and direct not only what shall be done but also how it shall be done, such as the details and means of how it shall be done. The IRS considers several factors to determine whether the worker is an employee or independent contractor. No one factor is controlling. A "yes" answer weighs in favor of employee status.

			YES	NO
1	INSTRUCTIONS	Is the worker required to comply with employer's instructions as to when, where, and how to work?	<input type="checkbox"/>	<input type="checkbox"/>
2	TRAINING	Is training required? Does the worker receive training from or at the direction of the employer?	<input type="checkbox"/>	<input type="checkbox"/>
3	INTEGRATION	Is the success of the employer's business significantly dependent upon the worker's services?	<input type="checkbox"/>	<input type="checkbox"/>
4	SERVICES RENDERED PERSONALLY	Is the worker required to perform the work personally?	<input type="checkbox"/>	<input type="checkbox"/>
5	HIRING ASSISTANTS	Does the person for whom services are performed have the ability to hire, supervise and pay assistants?	<input type="checkbox"/>	<input type="checkbox"/>
6	CONTINUING RELATIONSHIP	Does the worker have an ongoing relationship with the employer?	<input type="checkbox"/>	<input type="checkbox"/>
7	SET HOURS OF WORK	Is the worker required to adhere to set work hours?	<input type="checkbox"/>	<input type="checkbox"/>
8	FULL-TIME WORK REQUIRED	Is the worker required to work, or be available to work, full-time?	<input type="checkbox"/>	<input type="checkbox"/>
9	WORK DONE ON PREMISES	Does the worker perform work on the employer's premises and use the company's office equipment?	<input type="checkbox"/>	<input type="checkbox"/>
10	SEQUENCE OF WORK	Does the worker perform work in a sequence or according to a schedule set by the employer?	<input type="checkbox"/>	<input type="checkbox"/>

			YES	NO
11	REPORTING OBLIGATIONS	Is the worker required to submit regular reports to the employer?	<input type="checkbox"/>	<input type="checkbox"/>
12	METHOD OF PAYMENT	Are payments of regular amounts at set intervals made to the worker?	<input type="checkbox"/>	<input type="checkbox"/>
13	PAYMENT OF BUSINESS AND TRAVEL EXPENSES	Is the worker reimbursed for business and travel expenses?	<input type="checkbox"/>	<input type="checkbox"/>
14	FURNISHING OF TOOLS AND MATERIALS	Does the employer provide the worker with tools and materials?	<input type="checkbox"/>	<input type="checkbox"/>
15	INVESTMENT	Has the worker lacked investment in the facilities or equipment used to perform services?	<input type="checkbox"/>	<input type="checkbox"/>
16	RISK OF LOSS	Does the work arrangement prevent the worker from making a profit or suffering a loss while rendering services?	<input type="checkbox"/>	<input type="checkbox"/>
17	WORKING FOR MORE THAN ONE COMPANY AT A TIME	Does the worker only work for one employer at a time?	<input type="checkbox"/>	<input type="checkbox"/>
18	AVAILABILITY OF SERVICES TO THE GENERAL PUBLIC	Are the services offered to the employer unavailable to the general public?	<input type="checkbox"/>	<input type="checkbox"/>
19	RIGHT TO FIRE	Can the worker be fired?	<input type="checkbox"/>	<input type="checkbox"/>
20	RIGHT TO QUIT	Can the worker quit work at any time?	<input type="checkbox"/>	<input type="checkbox"/>
21	EMPLOYEE BENEFITS	Does the worker receive employee benefits?	<input type="checkbox"/>	<input type="checkbox"/>

If you have any questions about the “true” status of your “employees”, or their real “status” or are concerned about Federal liability for misclassification (even if unintentional), please contact the Labor & Employment Group at Foster Swift Collins & Smith PC.

LABOR & EMPLOYMENT ATTORNEYS

GROUP LEADER

Frank T. Mamat
248.539.9919
fmamat@fosterswift.com

Alicia W. Birach | 248.785.4721
Michael R. Blum | 248.785.4722
Lindsey E. Bosch | 616.726.2209
Karl W. Butterer | 616.726.2212
Pamela C. Dausman | 517.371.8163
Todd W. Hoppe | 616.726.2246
John W. Inhulsen | 616.726.2225
Melissa J. Jackson | 517.371.8106

Mindi M. Johnson | 616.726.2252
Ray H. Littleton | 248.539.9903
Scott L. Mandel | 517.371.8185
Thomas R. Meagher | 517.371.8161
Brian J. Renaud | 248.539.9913
Joshua K. Richardson | 517.371.8303
Deanna Swisher | 517.371.8136