

IRS FACTORS OF THE COMMON LAW TEST

Health Science Center at Brooklyn Foundation

Please consider the following factors in determining whether a worker is an employee or an independent contractor. Feel free to include additional information not covered by the "Common Law Test" that further clarifies or supports the worker's classification. Submit this form and letter of offer with each standard voucher presented for payment by the Health Science Center at Brooklyn Foundation.

1. Is the Independent Contractor required to follow your instructions?

Yes _____ No _____

(Employees must comply with another person's instructions on when, where and how the work is performed. If the firm (employer/business) retains the right to control the details of the worker's performance, then the relationship is more likely an employee relationship).

2. Does the firm provide training to the Independent Contractor?

Yes _____ No _____

(Independent contractors are not normally trained by the firm and use their own methods).

3. Are the services to be provided by the Independent Contractor an integral part of the firm's day to day operations?

Yes _____ No _____

(Employees' services are usually a vital part of the daily operations of an employer's operation).

4. Does the Independent Contractor have the ability to delegate work to others, or to hire, supervise and pay assistants?

Yes _____ No _____

(Employees personally perform the services whereas contractors may delegate such work to others)

5. Is the job of relatively short duration?

Yes _____ No _____

(Employees are usually hired for an ongoing period, whereas a contractor's work ends when the job ends).

6. Is the Independent Contractor required to work set hours?

Yes _____ No _____

(Employees usually must adhere to a work schedule established by the employer).

7. Is the Independent Contractor required to work on a full time basis?

Yes _____ No _____

(Employees usually work full time for an employer whereas independent contractors work when and for whom they choose).

8. Where will the Independent Contractor perform the work?

(Individuals who work on the firm's premises may be viewed as employees)

9. Does the Independent Contractor have the freedom to perform the work in his/her own time and in his/her own way?

Yes _____ No _____

(Individuals told to perform work in a certain sequence are generally considered to be employees)

10. Is the Independent Contractor required to submit, upon request, regular oral or written reports?

Yes _____ No _____

(Employees are more likely to be required to submit regularly scheduled reports to the employer).

11. Is the Independent Contractor to be paid on a regular basis?

Yes _____ No _____

(Typically, employees are paid on a regular basis whereas independent contractors are compensated by the job, lump sum or straight commission basis).

12. Are the travel expenses, if any, that are incurred by the Independent Contractor to be incorporated into his/her fee?

Yes _____ No _____

(Employer payments of a person's work related travel expenses that are paid on a separate travel voucher generally indicate employee status).

13. Does the Independent Contractor supply his own tools and materials?

Yes _____ No _____

(Employers generally supply employees with tools and materials).

14. Does the Independent Contractor have a risk of loss?

Yes _____ No _____

(Independent contractors realize a profit or loss as the result of their services or performance).

15. Does the Independent Contractor have the freedom to work for more than one firm at a time?

Yes _____ No _____

(Individuals who perform services for a number of employers are usually independent contractors).

16. a. Are the services to be provided available to the public?

Yes _____ No _____

b. Are the services advertised?

Yes _____ No _____

(Individuals who regularly make their services available to the general public are usually treated as independent contractors).

17. Does either party have the right to terminate the relationship at will without incurring any liability?

Yes _____ No _____

(An employee can terminate his/her employment relationship with his/her employer at any time, whereas an independent contractor may not be dismissed or terminate a contract without consequences, e.g., breach of contract).

18. Is the Independent Contractor doing business as a corporation?

Yes _____ No _____

19. Does the Independent Contractor have a Federal Employment Identification number?

Yes _____ No _____ If yes, please provide number, if it has not been provided with an invoice submission previously _____.

20. If no EIN number, does the Independent Contractor have a social security number?

Yes _____ No _____ If yes, please provide number, if it has not been provided with an invoice submission previously _____.

Project Manager

Date

Person who completed the Questionnaire

Date