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## A Guide to the Common Law Factors

### 1. Does the Client instruct the Candidate as to when, where and how work is performed?

A worker who must comply with another person's instructions about when, where and how he or she is to work is ordinarily an employee. If the service recipient has the right to require compliance with instructions, or require completion of a different scope of work using specified guidelines, it is likely that an employer-employee relationship exists.

Employee	Independent Contractor
Must follow set and/or mandatory instructions, where, when, how to perform work.	Follows own individual instructions. Performs work based upon independently established procedures or industry specs.

### 2. Did the Client train the Candidate to perform services in a particular way?

Training a worker to complete the task at hand or requiring a worker to attend meetings and receive direction are factors indicative of an employer-employee relationship. Training a worker in specific methods indicates that the service recipient wants the services accomplished in a certain manner. Voluntary uncompensated training may not be an indication of an employer-employee relationship.

Employee	Independent Contractor
Receives and/or is required to receive training.	Skilled professional requiring no training to adequately perform services.

### 3. Are the Candidate's services vital to company operations?

When the success of a particular project is dependent upon the performance of certain services, especially for a lengthy period in an ongoing manner, the worker who performs these services must be subject to a certain amount of control by the service recipient. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control.

Employee	Independent Contractor
Provides essential services, which meld into overall business operation.	Work performed is not an "integral part," it is a "unique" service.

### 4. Is the Candidate required to perform the work personally?

By requiring a worker to perform the contracted services personally, presumably the service recipient is interested in the means and methods used to accomplish the work in addition to the results.

Employee	Independent Contractor
Required to render services personally.	Has assistants or employees while retaining the right to hire others to perform the required work.

### 5. Is the Candidate prohibited from hiring, supervising and paying assistants?

If the service recipient supervises the hiring process and paying of assistants, that factor generally shows control over the workers on the job. However, if the worker performs the hiring, supervision and pays assistants and is responsible only for the attainment of a result, this factor is indicative of an independent contractor.

Employee	Independent Contractor
Required to render services personally.	Has assistants or employees while retaining the right to hire others to perform the required work.

### 6. Does the Candidate perform regular and continuous services for the Client?

A continuing relationship, not based on projects between the worker and the person or persons for whom the services are performed, indicates that an employer-employee relationship exists.

Employee	Independent Contractor
Services are part of a continuing relationship.	Provides services and contracts for separate and distinct projects, not on continuing basis.

### 7. Does the Client set the hours of work for the Candidate?

Requiring the work to be performed at set hours indicates control by the service recipient over the worker and is indicative of an employer - employee relationship.

Employee	Independent Contractor
Required to work set hours.	Retains right to complete work at any time.

### 8. Does the Candidate provide services on a substantially full-time basis to the Client?

If the worker must devote a substantial amount of time (full-time) to the business and is not working on a project basis, the worker may be limited from performing services elsewhere and to some extent is being controlled. An independent contractor is free to perform work for other clients as he or she chooses.

Employee	Independent Contractor
Required to devote full-time to a job on a Non-project basis.	Contract specifies what is to be accomplished by what date.

### 9. Is the work performed on the Client's premises?

If the service recipient requires the worker to perform the work onsite and the work could be done elsewhere, this factor suggests control.

Employee	Independent Contractor
Required to work onsite, when alternatives exist.	Rents/leases location where work is performed.

### 10. Does the Client control the sequence or the order of the work performed?

If a worker must perform services in the order or sequence set by the service recipient, this factor shows that the worker is not free to follow the worker's own pattern of work. The worker should maintain this right. Adherence to an established industry or technical standard is generally not regarded as control on the part of the service recipient.

Employee	Independent Contractor
Required to perform task in set manner, routine and schedule.	Has full discretion over routine or manner in which to perform services.

### 11. Does the Client require the Candidate to submit regular oral or written reports?

Requiring the worker to submit regular oral or written reports indicates a degree of control. Quality assurance checks with no evaluation system may not indicate an employer-employee relationship.

Employee	Independent Contractor
Required to submit regular oral and/or written work reports where work is evaluated.	Has few or no obligations to file regular written and/or oral reports.

### 12. Does the Client pay the Candidate by the hour, week or month?

Payment by the hour, week, or month generally points to an employer-employee relationship. Contracts structured with payment made by the job or on a fixed fee basis indicates that the worker is an independent contractor.

Employee	Independent Contractor
A person is paid at regular intervals.	Compensation determined separately by project or based on fixed fee.

### 13. Does the Client pay the person's travel and business expenses?

Ordinarily employees are reimbursed for travel or business related expenses. An employer, to be able to control expenses, generally retains the right to regulate the worker's business activities. An independent contractor incurs and pays travel and incidental costs as part of his/her ongoing business expenses.

Employee	Independent Contractor
Expenses are paid or reimbursed.	No reimbursement for out-of-pocket expenses.

### 14. Does the Client furnish tools or equipment for the Candidate?

The furnishing of significant tools, materials and other equipment tends to reduce the workers risk of loss and lean towards the existence of an employer-employee relationship.

Employee	Independent Contractor
Tools and materials are furnished.	Furnishes own tools and materials.

### 15. Does the Candidate lack a "significant investment" in facilities, tools or equipment?

If the worker invests in facilities that are used in performing services, that factor tends to indicate that the worker is an independent contractor. Particularly if part of this investment requires ongoing overhead or maintenance costs. Lack of investment in facilities indicates dependence on the service recipient for such facilities and accordingly, the existence of an employer-employee relationship.

Employee	Independent Contractor
Does not invest in facilities and/or equipment used to perform work.	Possesses and invests in facilities and equipment to perform services.

### 16. Can the Candidate realize a profit or loss from his/her service to the Client?

A worker who can realize a profit or suffer a loss as a result of performing the contracted services is generally an independent contractor. Independent contractors are considered businesses. A business inherently incurs certain financial risks and can realize profits while employees do not.

Employee	Independent Contractor
Compensated for services at fixed rate regardless of profitability.	Shoulders the possibility of incurring a loss and realizing a profit.

**17. Is the Client the sole or major source of income for the Candidate?**

A worker who receives the majority of income (70%+) from only one Client leans very heavily towards being an employee.

Employee	Independent Contractor
Performs services for only one firm at a time, on a non-project basis.	Has numerous concurrent clients is not financially dependent on any one.

**18. Does the Candidate not make services available to the general public?**

The fact that a worker makes his or her services available to the general public lends itself to independent contractor status.

Employee	Independent Contractor
Services are not offered to general public, points toward control.	Offers services to public.

**19. Does the Client have the right to discharge the Candidate at will?**

An employer exercises control through the threat of dismissal, which to some degree can cause the worker to comply with the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as he or she produces a result that meets the contract specifications.

Employee	Independent Contractor
Can be discharged at any time with no liquidated damages.	Cannot be discharged other than for failure to perform contracted service.

**20. Can the Candidate terminate the relationship without liability?**

If the worker has the right to end his or her relationship with the service recipient at will and not incur a liability, that factor indicates an employer-employee relationship.

Employee	Independent Contractor
May terminate relationship at any time.	May terminate his or her relationship only upon completion of contract or breach by other party.

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