

### SCOPE:

Determining whether a position should be classified as an independent contractor or a W-2 employee can be very challenging. As a first step in properly classifying positions, consider who maintains behavioral control, financial control, and the type of relationship that will exist between parties.

1. **Behavioral Control:** Does the company control or have the right to control what, how and when the worker does their job?
2. **Financial Control:** Are the business aspects of the worker’s job controlled by the employer? These include things like how, when, and what the worker is paid, whether expenses are reimbursed, who provides equipment/tools/supplies, etc.
3. **Type of Relationship:** Are there written contracts? Does the employer provide benefits to the worker such as a pension plan, insurance, vacation or sick pay? Will the relationship continue indefinitely or is it on a project basis? Is the work performed a key aspect of the business?

Generally speaking, if the company has majority control over these three categories, the worker should be classified as an employee. Conversely, if the worker has more control, they would likely be classified as a contractor.

### TEST:

The IRS has provided 20-factors to consider when determining who is in control and how to classify a worker appropriately. Businesses must weigh all these factors when determining whether a worker is an employee or independent contractor. Some factors may indicate that the worker is an employee, while other factors indicate that the worker is an independent contractor. There is no “magic” or set number of factors that “makes” the worker an employee or an independent contractor, and no one factor stands alone in making this determination. Also, factors which are relevant in one situation may not be relevant in another.

The keys are to look at the entire relationship, consider the degree or extent of the right to direct and control, and finally, to document each of the factors used in coming up with the determination.

### TEST RESULTS:

In general, “no” responses to all questions will indicate an independent contractor. A “yes” response will indicate a W-2 employee. However, that is not always the case nor should it be implied that this test alone guarantees a correct classification. If after reviewing the 3 categories of control and taking the test, the classification is still unclear, [Form SS-8](#) (PDF) can be filed with the IRS. The IRS will review the facts and circumstances and officially determine the worker’s status.

Be aware that this can take 6 months or more to get a determination, but a business that continually hires the same types of workers to perform particular services may want to consider filing the [Form SS-8](#) (PDF).

*This SAMPLE form is meant as a starting point for documentation by Helpside’s clients. As such, Helpside has not created it to apply to a client’s particular circumstances. Thus, the content should not be regarded as legal advice and not be relied upon as such. In relation to any particular problem, clients are advised to seek specific advice. Finally, please note that relevant laws may change after publication of this form.*

Document History:	Document Type: Hiring	Implementation Date: 01/01/2018	Version: 1.0	Last Revised: 03/01/2020	Page Number: - 1 -
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1. Instructions	Is the worker required to comply with employer's instructions about when, where and how to work?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Training	Is training required? Does the worker receive training from the employer or work with an experienced employee?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. Integration	Is the success or continuation of your business somewhat dependent on the type of service provided by the worker?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. Services rendered personally	Does the worker have to personally perform the work? <i>(Meaning, can the worker hire others to work on the project?)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
5. Hire, supervise and pay assistants	Is the worker discouraged or forbidden from hiring, assigning work, paying and supervising their own assistants to do the work?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6. Continuing relationship	Does the worker have a continuous employment relationship solely with the employer?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7. Set hours of work	Does the worker have to work specific hours set by the employer?	<input type="checkbox"/> Yes <input type="checkbox"/> No
8. Full-time work required	Is the worker required to work full-time at your company?	<input type="checkbox"/> Yes <input type="checkbox"/> No
9. Place of Work	Does the worker need to perform their work on the employer's premises and use company equipment?	<input type="checkbox"/> Yes <input type="checkbox"/> No
10. Sequence of Work	Does the employer require that work be performed in a specific order or sequence?	<input type="checkbox"/> Yes <input type="checkbox"/> No
11. Reporting Obligations	Does the worker submit regular written or oral reports to the employer?	<input type="checkbox"/> Yes <input type="checkbox"/> No
12. Method of Payment	Is the worker paid by the hour, week, or month? <i>(Payment by piece rate, commission, project completion, or lump sum is generally more characteristic of an Independent Contractor)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
13. Payment of Travel Expenses	Does the worker receive reimbursement for business or travel expenses?	<input type="checkbox"/> Yes <input type="checkbox"/> No
14. Furnishing of Tools and Materials	Does the worker rely on the employer for tools and work materials?	<input type="checkbox"/> Yes <input type="checkbox"/> No
15. Investments	Does the worker rely on the company to provide work facilities? Does the worker invest in or maintain their own facilities or equipment?	<input type="checkbox"/> Yes <input type="checkbox"/> No
16. Realization of profit or loss	Does the worker receive predetermined earnings and have little chance to realize significant profit or loss through their work?	<input type="checkbox"/> Yes <input type="checkbox"/> No
17. Multiple employers	Can or does the worker only perform services for one company?	<input type="checkbox"/> Yes <input type="checkbox"/> No
18. Availability of services to the general public	Are the workers services available to the employer only and not the general public?	<input type="checkbox"/> Yes <input type="checkbox"/> No
19. Right to discharge	Can the employer discharge the worker at any time without liability? <i>(A company's ability to terminate an Independent Contractor generally depends on the terms of the contract.)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
20. Right to quit	Can the worker terminate services at any time without liability? <i>(Independent Contractors generally cannot terminate services without liability, except as allowed under their contracts.)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No