

The Twenty Factor Test

This is an analytical tool compiled by the IRS and the SSA, but is NOT the legal test for determining status. The legal test is whether there is a right to direct and control the means and detail of work.

- #1. Do you instruct the person as to when, where, and how the work is performed?
- #2. Did you train the person to perform services in a particular way?
- #3. Are the person's services vital to your company's operations?
- #4. Is the person required to perform the work personally?
- #5. Is the person prohibited from hiring, supervising, and paying assistants?
- #6. Does the person perform regular and continuous services for you?
- #7. Do you set the hours of work for the person?
- #8. Does the person provide services on a substantially full time basis to your company?
- #9. Is the work performed on your premises?
- #10. Do you control the sequence or the order of the work performed?
- #11. Do you require the person to submit regular oral or written reports?
- #12. Do you pay the person by the hour, week, or month?
- #13. Do you pay the person's travel and business expense?
- #14. Do you furnish tools or equipment for the person?
- #15. Does the person lack a "significant investment" in facilities, tools, or equipment?
- #16. Can the person realize a profit/loss from his/her service to your company?
- #17. Is your company the sole or major source of income for that person?
- #18. Does the person not make services available to the general public?
- #19. Do you have the right to discharge the person at will?
- #20. Can the person terminate the relationship without liability?

When asking the 20 questions above, answering "YES" to all BUT #16 & #18, most likely makes the worker and employee. Answering "No" to #16 & #18, most likely makes the worker and employee. The opposite answers would most likely mean the worker can be treated as and independent contractor. When in doubt, file and SS-8 with the IRS and treat the worker as an employee until you get an answer.