IRS 20 Factor Test

	Issue	Employee	Independent Contractor
1	Instructions	Required to comply with employer's instructions as to how to do the job.	Follows own instructions.
2	Training	Required to be trained by employer on how to do the job.	Does not require training from employer.
3	Integration	Services are fully integrated into employer's business, which is significantly dependent upon them.	Services are not integrated into employer's business.
4	Personal	Required to perform services personally.	Not required to perform services personally.
5	Assistants	Assistants are hired, supervised and paid by employer.	Generally hires own assistants, required only to attain a particular result.
6	Continuity	A continuing economic relationship which may include work at recurring but irregular intervals.	No assumption of continuing relationship.
7	Hours of Work	Required to perform work within set hours of work specified by employer.	Free to establish own hours of work.
8	Time Required	Usually devoted full-time to employer's business, may be restricted from performing work for others.	May work at any time and for whom he chooses.
9	Work Location	Performs work on employer's premises. (Importance dependent on nature of work and requirements, if any, of employer.)	Work may be performed anywhere, often at worker's office or location.
10	Sequence of Work	Follows order or sequence of work set by employer.	Free to accomplish work in any sequence.
11	Reports	Generally makes regular or periodic, either oral or written, to employer.	Not necessarily required to submit regular reports.
12	Payment	Is generally paid by time, i.e. hour, week or month.	Is generally paid by result, i.e. completion of project or straight commission.
13	Expenses	Is generally reimbursed for business-related expenses, implying right of regulation and direction by employer.	Generally, covers own expenses and expenses may be included in total payment.
14	Tools and Materials	Tools and materials needed for job are provided by employer.	Uses his own tools and materials to accomplish work.
15	Facility Investment	Generally has no investment in facilities required to accomplish work, indicating dependence on employer's facilities.	Has an investment in facilities, such as an office rented from third party.
16	Profit or Loss	Cannot realize a profit or loss on his services.	Has an exposure to economic gain or loss on accomplishment of work.
17	Simultaneous Work	Performs work under a single financial arrangement.	Performs work simultaneously for multiple, unrelated persons or entities.
18	General Public	Does not make services available to general public.	Makes services available to general public on regular basis.
19	Discharge	Employer can fire and thereby control nature and pace of work through threat of firing.	Cannot be discharged so long as result is satisfactory.
20	Termination	Can quit at any time without liability.	Can terminate only with risk of breach of contract liability.

Tax Statement, electronically. Each employee participating must consent (either electronically or by paper document) to receive his or her Form W-2 electronically, and you must notify the employee of all hardware and software requirements to receive the form. You may not send a Form W-2 electronically to any employee who does not consent or who has revoked consent previously provided.

To furnish Forms W-2 electronically, you must meet the following **disclosure requirements** and provide a clear and conspicuous statement of each requirement to your employees.

- The employee must be informed that he or she will receive a paper Form W-2 if consent is not given to receive it electronically.
- The employee must be informed of the scope and duration of the consent.
- The employee must be informed of any procedure for obtaining a paper copy of his or her Form W-2 and whether or not the request for a paper statement is treated as a withdrawal of his or her consent to receiving his or her Form W-2 electronically.
- The employee must be notified about how to withdraw a consent and the effective date and manner by which the employer will confirm the withdrawn consent. The employee must also be notified that the withdrawn consent does not apply to the previously issued Forms W-2.
- The employee must be informed about any conditions under which electronic Forms W-2 will no longer be furnished (for example, termination of employment).
- The employee must be informed of any procedures for updating his or her contact information that enables the employer to provide electronic Forms W-2.
- The employer must notify the employee of any changes to the employer's contact information.

You must furnish electronic Forms W-2 by the same due date as the paper Forms W-2. For more information on furnishing Form W-2 to employees electronically, see Regulations section 31.6051-1(j).

Photographs of missing children. The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

Introduction

This publication supplements Publication 15 (Circular E). It contains specialized and detailed employment tax information supplementing the basic information provided in Publication 15 (Circular E). This publication also contains tables for withholding on distributions of Indian gaming profits to tribal members. Publication 15-B, Employer's Tax Guide to Fringe Benefits, contains information about the employment tax treatment of various types of noncash compensation.

Ordering publications and forms. See *Quick and Easy Access to IRS Tax Help and Tax Products*, located at the end of this publication, for information on how to obtain forms and publications.

Useful Items

You may want to see:

Publication

- ❑ **15-B** Employer's Tax Guide to Fringe Benefits
- ❑ **505** Tax Withholding and Estimated Tax
- ❑ **515** Withholding of Tax on Nonresident Aliens and Foreign Entities
- ❑ **583** Starting a Business and Keeping Records
- ❑ **1635** Employer Identification Number: Understanding Your EIN

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions.

You can write to us at the following address:

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Forms & Publications Branch
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1111 Constitution Ave. NW, IR-6526
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We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

You can email us at *taxforms@irs.gov*. Please put "Publication 15-A" on the subject line. You can also send us comments from *www.irs.gov/formspubs*. Click on *More Information* and then click on *Comment on Tax Forms and Publications*.

Although we cannot respond individually to each comment received, we do appreciate your feedback and will consider your comments as we revise our tax products.

1. Who Are Employees?

Before you can know how to treat payments that you make to workers for services, you must first know the business relationship that exists between you and the person performing the services. The person performing the services may be:

- An independent contractor,
- A common-law employee,
- A statutory employee, or

- A statutory nonemployee.

This discussion explains these four categories. A later discussion, *Employee or Independent Contractor* in section 2, points out the differences between an independent contractor and an employee and gives examples from various types of occupations.

If an individual who works for you is not an employee under the common-law rules (see section 2), you generally do not have to withhold federal income tax from that individual's pay. However, in some cases you may be required to withhold under the backup withholding requirements on these payments. See Publication 15 (Circular E) for information on backup withholding.

Independent Contractors

People such as doctors, veterinarians, and auctioneers who follow an independent trade, business, or profession in which they offer their services to the public, are generally not employees. However, whether such people are employees or independent contractors depends on the facts in each case. The general rule is that an individual is an independent contractor if you, the person for whom the services are performed, have the right to control or direct only the result of the work and not the means and methods of accomplishing the result.

Common-Law Employees

Under common-law rules, anyone who performs services for you is generally your employee if you have the right to control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed. For a discussion of facts that indicate whether an individual providing services is an independent contractor or employee, see section 2.

If you have an employer-employee relationship, it makes no difference how it is labeled. The substance of the relationship, not the label, governs the worker's status. It does not matter whether the individual is employed full time or part time.

For employment tax purposes, no distinction is made between classes of employees. Superintendents, managers, and other supervisory personnel are all employees. An **officer of a corporation** is generally an employee; however, an officer who performs no services or only minor services, and neither receives nor is entitled to receive any pay, is not considered an employee. A **director of a corporation** is not an employee with respect to services performed as a director.

You generally have to withhold and pay income, social security, and Medicare taxes on wages that you pay to common-law employees. However, the wages of certain employees may be exempt from one or more of these taxes. See *Employees of Exempt Organizations* (section 3) and *Religious Exemptions and Special Rules for Ministers* (section 4).

Leased employees. Under certain circumstances, a firm furnishing workers to other firms is the employer of those workers for employment tax purposes. For example, a temporary staffing service may provide the services of secretaries, nurses, and other similarly trained workers to its clients on a temporary basis.

The staffing service enters into contracts with the clients under which the clients specify the services to be provided and a fee is paid to the staffing service for each individual furnished. The staffing service has the right to control and direct the worker's services for the client, including the right to discharge or reassign the worker. The staffing service hires the workers, controls the payment of their wages, provides them with unemployment insurance and other benefits, and is the employer for employment tax purposes. For information on employee leasing as it relates to pension plan qualification requirements, see *Leased employee* in Publication 560, Retirement Plans for Small Business.

Additional information. For more information about the treatment of special types of employment, the treatment of special types of payments, and similar subjects, see Publication 15 (Circular E) or Publication 51 (Circular A), Agricultural Employer's Tax Guide.

Statutory Employees

If workers are independent contractors under the common law rules, such workers may nevertheless be treated as employees by statute, (also known as “statutory employees”) for certain employment tax purposes. This would happen if they fall within any one of the following four categories and meet the three conditions described next under *Social security and Medicare taxes*.

1. A driver who distributes beverages (other than milk) or meat, vegetable, fruit, or bakery products; or who picks up and delivers laundry or dry cleaning, if the driver is your agent or is paid on commission.
2. A full-time life insurance sales agent whose principal business activity is selling life insurance or annuity contracts, or both, primarily for one life insurance company.
3. An individual who works at home on materials or goods that you supply and that must be returned to you or to a person you name, if you also furnish specifications for the work to be done.
4. A full-time traveling or city salesperson who works on your behalf and turns in orders to you from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments. The goods sold must be merchandise for resale or supplies for use in the buyer's business operation. The work performed for you must be the salesperson's principal business activity. See *Salesperson* in section 2.

Social security and Medicare taxes. Withhold social security and Medicare taxes from the wages of statutory employees if all three of the following conditions apply.

- The service contract states or implies that substantially all the services are to be performed personally by them.
- They do not have a substantial investment in the equipment and property used to perform the services (other than an investment in facilities for transportation, such as a car or truck).
- The services are performed on a continuing basis for the same payer.

Federal unemployment (FUTA) tax. For FUTA tax (the unemployment tax paid under the Federal Unemployment Tax Act), the term "employee" means the same as it does for social security and Medicare taxes, except that it does not include statutory employees defined earlier in *categories 2 and 3*. Any individual who is a statutory employee described earlier under *category 1 or 4* is also an employee for FUTA tax purposes and subject to FUTA tax.

Income tax. Do not withhold federal income tax from the wages of statutory employees.

Reporting payments to statutory employees. Furnish Form W-2 to a statutory employee, and check "Statutory employee" in box 13. Show your payments to the employee as "other compensation" in box 1. Also, show social security wages in box 3, social security tax withheld in box 4, Medicare wages in box 5, and Medicare tax withheld in box 6. The statutory employee can deduct his or her trade or business expenses from the payments shown on Form W-2. He or she reports earnings as a statutory employee on line 1 of Schedule C (Form 1040), Profit or Loss From Business, or Schedule C-EZ (Form 1040), Net Profit From Business. A statutory employee's business expenses are deductible on Schedule C (Form 1040) or C-EZ (Form 1040) and are not subject to the reduction by 2% of his or her adjusted gross income that applies to common-law employees.

H-2A agricultural workers. On Form W-2, **do not** check box 13 (Statutory employee), as H-2A workers are not statutory employees.

Statutory Nonemployees

There are three categories of statutory nonemployees: direct sellers, licensed real estate agents, and certain companion sitters. Direct sellers and licensed real estate agents are treated as self-employed for all federal tax purposes, including income and employment taxes, if:

- Substantially all payments for their services as direct sellers or real estate agents are directly related to sales or other output, rather than to the number of hours worked, and
- Their services are performed under a written contract providing that they will not be treated as employees for federal tax purposes.

Direct sellers. Direct sellers include persons falling within any of the following three groups.

1. Persons engaged in selling (or soliciting the sale of) consumer products in the home or place of business other than in a permanent retail establishment.
2. Persons engaged in selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis prescribed by regulations, for resale in the home or at a place of business other than in a permanent retail establishment.
3. Persons engaged in the trade or business of delivering or distributing newspapers or shopping news (including any services directly related to such delivery or distribution).

Direct selling includes activities of individuals who attempt to increase direct sales activities of their direct sellers and who earn income based on the productivity of their direct sellers. Such activities include providing motivation and encouragement; imparting skills, knowledge, or experience; and recruiting.

Licensed real estate agents. This category includes individuals engaged in appraisal activities for real estate sales if they earn income based on sales or other output.

Companion sitters. Companion sitters are individuals who furnish personal attendance, companionship, or household care services to children or to individuals who are elderly or disabled. A person engaged in the trade or business of putting the sitters in touch with individuals who wish to employ them (that is, a companion sitting placement service) will not be treated as the employer of the sitters if that person does not receive or pay the salary or wages of the sitters and is compensated by the sitters or the persons who employ them on a fee basis. Companion sitters who are not employees of a companion sitting placement service are generally treated as self-employed for all federal tax purposes.

Misclassification of Employees

Consequences of treating an employee as an independent contractor. If you classify an employee as an independent contractor and you have no reasonable basis for doing so, you are liable for employment taxes for that worker (the relief provision, discussed next, will not apply). See section 2 in Publication 15 (Circular E) for more information.

Relief provision. If you have a reasonable basis for not treating a worker as an employee, you may be relieved from having to pay employment taxes for that worker. To get this relief, you must file all required federal information returns on a basis consistent with your treatment of the worker. You (or your predecessor) must not have treated any worker holding a substantially similar position as an employee for any periods beginning after 1977.

Technical service specialists. This relief provision does not apply for a technical services specialist you provide to another business under an arrangement between you and the other business. A technical service specialist is an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work.

This limit on the application of the rule does not affect the determination of whether such workers are employees under the common-law rules. The common-law rules control whether the specialist is treated as an employee or an independent contractor. However, if you directly contract with a technical service specialist to provide services for your business and not for another business, you may still be entitled to the relief provision.

Test proctors and room supervisors. The consistent treatment requirement does not apply to services performed after December 31, 2006, by an individual as a test proctor or room supervisor assisting in the administration of college entrance or placement examinations if the individual:

- Is performing the services for a section 501(c) organization exempt from tax under section 501(a) of the code, and
- Is not otherwise treated as an employee of the organization for employment taxes.

Voluntary Classification Settlement Program (VCSP). Employers who are currently treating their workers (or a class or group of workers) as independent contractors or other nonemployees and want to voluntarily reclassify their workers as employees for future tax periods may be eligible to participate in the VCSP if certain requirements are met. To apply, use Form 8952, Application for Voluntary Classification Settlement Program (VCSP). For more information, visit IRS.gov and enter “VCSP” in the search box.

2. Employee or Independent Contractor?

An employer must generally withhold federal income taxes, withhold and pay over social security and Medicare taxes and pay unemployment tax on wages paid to an employee. An employer does not generally have to withhold or pay over any federal taxes on payments to independent contractors.

Common-Law Rules

To determine whether an individual is an employee or an independent contractor under the common law, the relationship of the worker and the business must be examined. In any employee-independent contractor determination, all information that provides evidence of the degree of control and the degree of independence must be considered.

Facts that provide evidence of the degree of control and independence fall into three categories: behavioral control, financial control, and the type of relationship of the parties. These facts are discussed next.

Behavioral control. Facts that show whether the business has a right to direct and control how the worker does the task for which the worker is hired include the type and degree of:

Instructions that the business gives to the worker. An employee is generally subject to the business' instructions about when, where, and how to work. All of the following are examples of types of instructions about how to do work.

- When and where to do the work.
- What tools or equipment to use.
- What workers to hire or to assist with the work.
- Where to purchase supplies and services.
- What work must be performed by a specified individual.
- What order or sequence to follow.

The amount of instruction needed varies among different jobs. Even if no instructions are given, sufficient behavioral control may exist if the employer has the right to control how the work results are achieved. A business may lack the knowledge to instruct some highly specialized professionals; in other cases, the task may require little or no instruction. The key consideration is whether the business has retained the right to control the details of a worker's performance or instead has given up that right.

Training that the business gives to the worker. An employee may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods.

Financial control. Facts that show whether the business has a right to control the business aspects of the worker's job include:

The extent to which the worker has unreimbursed business expenses. Independent contractors are more likely to have unreimbursed expenses than are employees. Fixed ongoing costs that are incurred regardless of whether work is currently being performed are especially important. However, employees may also incur unreimbursed expenses in connection with the services that they perform for their employer.

The extent of the worker's investment. An independent contractor often has a significant investment in the facilities or tools he or she uses in performing services for someone else. However, a significant investment is not necessary for independent contractor status.

The extent to which the worker makes his or her services available to the relevant market. An independent contractor is generally free to seek out business opportunities. Independent contractors often advertise,

maintain a visible business location, and are available to work in the relevant market.

How the business pays the worker. An employee is generally guaranteed a regular wage amount for an hourly, weekly, or other period of time. This usually indicates that a worker is an employee, even when the wage or salary is supplemented by a commission. An independent contractor is often paid a flat fee or on a time and materials basis for the job. However, it is common in some professions, such as law, to pay independent contractors hourly.

The extent to which the worker can realize a profit or loss. An independent contractor can make a profit or loss.

Type of relationship. Facts that show the parties' type of relationship include:

- ***Written contracts describing the relationship the parties intended to create.***
- ***Whether or not the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay.***
- ***The permanency of the relationship.*** If you engage a worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence that your intent was to create an employer-employee relationship.
- ***The extent to which services performed by the worker are a key aspect of the regular business of the company.*** If a worker provides services that are a key aspect of your regular business activity, it is more likely that you will have the right to direct and control his or her activities. For example, if a law firm hires an attorney, it is likely that it will present the attorney's work as its own and would have the right to control or direct that work. This would indicate an employer-employee relationship.

IRS help. If you want the IRS to determine whether or not a worker is an employee, file Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, with the IRS.

Industry Examples

The following examples may help you properly classify your workers.

Building and Construction Industry

Example 1. Jerry Jones has an agreement with Wilma White to supervise the remodeling of her house. She did not advance funds to help him carry on the work. She makes direct payments to the suppliers for all necessary materials. She carries liability and workers' compensation insurance covering Jerry and others that he engaged to assist him. She pays them an hourly rate and exercises almost constant supervision over the work. Jerry is not free to transfer his assistants to other jobs. He may not work on other jobs while working for Wilma. He assumes no responsibility to complete the work and will incur no contractual liability if he fails to do so. He and his assistants perform personal services for hourly wages. Jerry Jones and his assistants are employees of Wilma White.

Example 2. Milton Manning, an experienced tile setter, orally agreed with a corporation to perform full-time services at construction sites. He uses his own tools and performs services in the order designated by the corporation and according to its specifications. The corporation supplies all materials, makes frequent inspections of his work, pays him on a piecework basis, and carries workers' compensation insurance on him. He does not have a place of business or hold himself out to perform similar services for others. Either party can end the services at any time. Milton Manning is an employee of the corporation.

Example 3. Wallace Black agreed with the Sawdust Co. to supply the construction labor for a group of houses. The company agreed to pay all construction costs. However, he supplies all the tools and equipment. He performs personal services as a carpenter and mechanic for an hourly wage. He also acts as superintendent and foreman and engages other individuals to assist him. The company has the right to select, approve, or discharge any helper. A company representative makes frequent inspections of the construction site. When a house is finished, Wallace is paid a certain percentage of its costs. He is not responsible for faults, defects of construction, or wasteful operation. At the end of each week, he presents the company with a statement of the amount that he has spent, including the payroll. The company gives him a check for that amount from which he pays the assistants, although he is not personally liable for their wages. Wallace Black and his assistants are employees of the Sawdust Co.

Example 4. Bill Plum contracted with Elm Corporation to complete the roofing on a housing complex. A signed contract established a flat amount for the services rendered by Bill Plum. Bill is a licensed roofer and carries workers' compensation and liability insurance under the business name, Plum Roofing. He hires his own roofers who are treated as employees for federal employment tax purposes. If there is a problem with the roofing work, Plum Roofing is responsible for paying for any repairs. Bill Plum, doing business as Plum Roofing, is an independent contractor.

Example 5. Vera Elm, an electrician, submitted a job estimate to a housing complex for electrical work at $16 per hour for 400 hours. She is to receive $1,280 every 2 weeks for the next 10 weeks. This is not considered payment by the hour. Even if she works more or less than 400 hours to complete the work, Vera Elm will receive $6,400. She also performs additional electrical installations under contracts with other companies, that she obtained through advertisements. Vera is an independent contractor.