

PUT YOUR BUSINESS TO THE TEST

The tests for determining whether a worker should be classified as an employee or an independent contractor are based on "common law" rules that rely on custom and usage rather than written codes. A key factor is the degree of control, or right to control, that a business has over the worker. If the worker is required to comply with instructions about when, where and how the work is to be done, he or she would be classified as an employee.

The IRS bases its interpretation of common law on 20 rules that must each be weighed by the facts to determine whether workers are employees or independent contractors. Just how much weight each item is given varies case by case, depending on the type of business involved, industry standards and other factors.

GENERALLY, WORKERS ARE CONSIDERED EMPLOYEES WHEN THEY:

- 1) Must comply with the employer's work instructions.
- 2) Receive training from, or at the direction of, the employer.
- 3) Provide services that are integral to the employer's business.
- 4) Provide services that must be rendered personally.
- 5) Hire, supervise and pay workers for the employer.
- 6) Have an ongoing working relationship with the employer.
- 7) Must follow set hours of work.
- 8) Work full-time for the employer.
- 9) Do their work on the employer's premises.
- 10) Must do their work in a sequence set by the employer.
- 11) Must submit regular reports to the employer.
- 12) Receive payments of regular amounts at set intervals.
- 13) Receive payments for business and/or travel.
- 14) Rely on the employer to provide tools and materials.
- 15) Lack a major investment in resources for providing services.
- 16) Cannot make a profit or suffer a loss from their services.
- 17) Work for one employer at a time.
- 18) Do not offer their services to the general public.
- 19) Can be fired by the employer.
- 20) May quit work at any time without incurring liability.